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ANNUAL REPORT OF THE CITY ATTORNEY  
CITY AND COUNTY OF SAN FRANCISCO

JULY 1, 1971 - JUNE 30, 1972

THOMAS M. O'CONNOR  
CITY ATTORNEY





*I*  
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## I. LITIGATION SECTION



## I. LITIGATION

The City Attorney's office handles civil litigation involving the City and County, its employees, officers, boards and commissions and the San Francisco Unified School District.

### 1. LITIGATION CONCLUDED IN FISCAL YEAR.

1228 legal actions and proceedings were concluded during the 1971-72 fiscal year as follows:

Tort Actions	712
Nontort Actions	137
Abatement Actions	108
Workmen's Compensation Proceedings	245
Appellate Litigation	<u>26</u>
Total	1,228

#### Tort Litigation.

The 712 tort actions concluded sought damages for death, personal injury, or injury to property. For Summary of Departments, Judgments Paid, Settlements and Cases Won or Dismissed, see Tables 1 and 2 at the end of this chapter.

#### Nontort Litigation.

The 137 nontort actions concluded were eminent domain proceedings, contract and lease suits, actions to recover taxes, and antitrust suits, mandamus, prohibition and injunction proceedings. For Summary of Departments, see Table 3 at the end of this chapter.

#### Abatement Cases.

Proceedings to abate nuisances from violation of building, health, housing and related laws and ordinances are instituted after unsuccessful efforts of the Department of Public Works to eliminate the nuisance.

Nuisance abatement litigation has substantially increased due in part to an accelerated Federally Assisted Code Enforcement (FACE) program.

In fiscal 1971-72, 234 cases were referred to this office and 168 actions were filed. Of the 108 cases closed, 62 resulted in rehabilitation of the premises. 541 cases are pending.





FACE is designed to offset the disadvantages of the regular, or unassisted code enforcement program. It is administered by the Division of Property Conservation of the Bureau of Building Inspection, Department of Public Works. Under this program, neighborhoods characterized by declining conditions are designated FACE areas and receive the special benefits of the program.

As a means to assist home rehabilitation, FACE offers 3% interest loans and grants to area homeowners, through the Federal Department of Housing and Urban Development (HUD) to assist property owners in FACE areas to finance rehabilitation work.

Once a neighborhood has been designated a FACE area, systematic inspection of all buildings in the area is undertaken by FACE Inspectors and recommendations are made to property owners as to work required.

Eighteen deputies are involved in abatement proceedings. The City has been divided into districts with deputies assigned by district. This facilitates handling of the cases in that each deputy becomes familiar with his district.

#### Federal Litigation.

This office has represented in the federal courts a number of departments whose policies or procedures have been challenged on federal grounds.

It represented the San Francisco Unified School District in cases dealing with freedom of speech, right of the District to maintain and operate an academic high school, and due process of law as affecting discipline of high school students. It represented the San Francisco Community College District on a due process issue involving student discipline, and the Juvenile Court upon the issue of right to counsel.

Police Department policies, including security searches of persons entering public buildings, were defended.

Suits under the Civil Rights Act (42 U.S.C. §1983) concerning asserted discrimination in Fire Department hiring, discrimination in School District administrative appointments, and sex discrimination involving availability of the work furlough program to women were handled.

A number of suits to prevent state court trials, again under the Civil Rights Act, were defended.



101 cases filed in the U. S. District Court were open and pending at the close of the fiscal year.

#### Workmen's Compensation Proceedings.

Proceedings before the Workmen's Compensation Appeals Board concern applications filed by employees of City and the School District, or their dependents, for compensation for injuries or death incurred within the scope of employment. This office attended 620 hearings relating to 608 applications. 245 cases were concluded during the fiscal year.

For a Summary of Applications from each department and agency, see Table 4 at the end of this chapter. For further details, see Chapter V of this report.

#### Appellate Litigation.

The 26 appellate cases concluded are:

1. Alpert v. City and County of San Francisco, 1 Civ. No. 28142 (nonpublication), affirmed decision for City denying writ of mandate sought by employees of Department of Social Services who claimed they were entitled to a hearing prior to being suspended for disciplinary purposes and that their appointing officer could not act impartially as both accuser and judge.
2. Baird v. City and County of San Francisco, 1 Civ. No. 27539 (nonpublication), reversed a decision denying leave to file a late claim.
3. Bertuccelli v. Carreras, U.S. Court of Appeals No. 25230 and No. 26830. U. S. Court of Appeals affirmed judgment of U. S. District Court granting City's motion to dismiss in action for damages for alleged false arrest brought against City and state officers.
4. Caramucci v. Born, 1 Civ. No. 29929 (nonpublication), affirmed a judgment in favor of City which held that attendants for welfare recipients are the employees of the welfare recipients and not the county welfare department.
5. City and County of San Francisco v. Padilla, 23 C.A.3d 38, reversed judgment denying City's Department of Public Works right to abate a nuisance -- building altered in violation of terms of alteration permit -- where Board of Permit Appeals rendered illegal decision.
6. City and County of San Francisco v. California Public Utilities Commission, 6 C. 3d 119, Supreme Court annulled Public





Utilities Commission Decision No. 77984 and held that as a matter of law Pacific Telephone and Telegraph Company must use accelerated depreciation with normalization for rate making purposes.

7. Cities of Los Angeles, San Francisco and San Diego v. California Public Utilities Commission, 7 C. 3d 331, annulled Public Utilities Commission Decision No. 78851 granting \$143 million rate increase to Pacific Telephone and Telegraph Company.

8. Charles S. v. San Francisco Unified School District, C.A. 3d \_\_\_\_\_, 97 Cal. Rptr. 422, affirmed judgment in favor of the School District upholding student's suspension proceedings pursuant to Education Code §10607.

9. County of Alameda v. City and County of San Francisco, 19 C.A. 3d 750, affirmed judgment that "commuter tax" ordinance was unconstitutional.

10, 11, 12. Demich, Inc., et al v. Ferdon, et al, U.S. District Court 51995; Alex DeRenzy v. Cahill, et al, U.S. District Court 52001; and Natali v. Municipal Court, U.S. District Court 50737, were consolidated on appeal. 426 F.2d 643, 401 U.S. 990, 28 28 L.Ed.2d 528. Actions by theater owners and operators for injunction and damages arising out of arrests for alleged violation of obscenity laws (Penal Code §311.2, et seq.). U.S. District Court denied motions to dismiss, denied action for damages, declared Penal Code constitutional, but held constitutional rights violated through arrests and seizures of film without first having accorded a prior adversary hearing. Judgment affirmed by U. S. Court of Appeal for the Ninth Circuit, reversed by U.S. Supreme Court on ground that District Court should have abstained from assuming jurisdiction while criminal proceedings pending in State Court. These cases and 9 other pending cases were remanded and dismissed by the District Court.

13. Denman v. Recreation and Park Commission, 1 Civ. No. 28454 (nonpublication), reversed a dismissal of a taxpayer's suit to restrain the expenditure of funds from the estate of LeRoy Vane to construct a Senior Citizens Center in Golden Gate Park.

14. Fort v. City and County of San Francisco, 1 Civ. No. 27243 (nonpublication), affirmed judgment for City upholding dismissal of limited tenure employee.

15. Franklin v. Municipal Court, 1 Civ. Nos. 29013 and 29803 (nonpublication), affirmed a judgment denying a petition for writ to compel return of a gun and reversed a dismissal of an action for conversion.



16. Halberstadt v. City and County of San Francisco, 1 Civ. No. 30500 (nonpublication), affirmed order of contempt for violation of an injunction relating to a Civic Auditorium lease.

17. Halo Sales Corp. v. City and County of San Francisco, 6 C. 3d 164, affirmed judgment for City holding hypothecation of imports nullified import exemption from ad valorem taxes.

18. Harman v. City and County of San Francisco, 7 C.3d 150, reversed a judgment for City in a taxpayer's action to annul sale of vacated streets at 50% of value.

19. In re Lyons, 1 Civ. No.30061, jurisdiction of San Francisco Juvenile Court in a child dependency matter.

20. In re Joseph T., Jr. v. City and County of San Francisco, \_\_\_\_\_ C.A. 3d \_\_\_\_\_, decision that parents of a minor are not entitled to court appointed and compensated counsel on appeal of an adjudication of dependency under Welfare & Institutions Code §600.

21. Lewis v. City and County of San Francisco, 21 C.A.3d 339, affirmed judgment for City dismissing complaint after sustaining of demurrer with leave to amend for failure to present wrongful death claim notwithstanding decedent had filed a personal injury claim.

22. Luxor Cab Co. v. Cahill, 21 C.A. 3d 551, affirmed judgment finding sufficient evidence to uphold granting of taxicab permits by Board of Permit Appeals.

23. Mark v. Pacific Gas & Electric Co., City and County of San Francisco, Harold A. Chase, 7 C.3d 170, affirmed judgment of nonsuit as to City and property owner and reversed judgment of nonsuit for Pacific Gas & Electric, where student attempted to remove light from lamp pole under control of Pacific Gas & Electric Company was electrocuted.

24. National Exhibition Co. v. City and County of San Francisco, 24 C.A. 3d 1, affirmed judgment for City sustaining ordinance imposing admission tax on operator of Candlestick Park Stadium.

25. Sokol v. Mullan & Cahill, et al., 1 Civ. 27636 (nonpublication), affirmed a judgment for City officers which held police immune from liability for requesting Pacific Telephone and Telegraph Company to disconnect telephone service used to violate law.





26. Tooker v. Bay Area Rapid Transit District, 22 C.A.3d 643, affirmed order for City and Bay Area Rapid Transit District denying preliminary injunction to require construction of West Portal subway and granting writ ordering BARTD to transfer funds to a special account to be used for modified facilities in the West Portal area and for completion of the Embarcadero Station.

## 2. CLAIMS.

4482 claims were filed during the fiscal year. A claim must be filed prior to institution of suit. This office handles investigation, review, evaluation and disposition of claims. For Summary of Claims by Department, see Table 5 at the end of this chapter.

97 Late Claim Applications were considered and acted upon by this office and reported to the Board of Supervisors (40 reports) and the Public Utilities Commission (57 reports).

## 3. LITIGATION PENDING AT END OF FISCAL YEAR.

1075 new actions were filed during the fiscal year. For Summary of Cases by Department, see Table 6 at the end of this chapter.

3380 actions (including 101 actions filed in the U. S. District Court) were open and pending at the close of the fiscal year. Of this number 42 cases are on appeal. For a Summary of Current Cases by Department, see Table 7 at the end of this chapter.



TABLE 1

SUMMARY OF 712 TORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Cases</u>	<u>Judgments Paid</u>	<u>Litigated Settlements</u>	<u>Won or Dismissed</u>
Airport	1	-	-	1
Electricity	3	-	-	3
Fire	5	1	1	3
Hetch Hetchy	1	-	-	1
Mayor	1	-	-	1
Municipal Railway	528	71	312	145
Parking Authority	1	-	-	1
Police	36	4	18	14
Public Health	12	-	6	6
Public Works	71	1	30	40
Recreation and Park	16	1	8	7
Retirement Board	4	-	3	1
Sheriff	4	-	1	3
Unified School District	24	1	3	1
Water	<u>5</u>	<u>1</u>	<u>3</u>	<u>1</u>
Total	712	80	391	241



TABLE 1

SUMMARY OF 712 TORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Cases</u>	<u>Judgments Paid</u>	<u>Litigated Settlements</u>	<u>Won or Dismissed</u>
Airport	1	-	-	1
Electricity	3	-	-	3
Fire	5	1	1	3
Hetch Hetchy	1	-	-	1
Mayor	1	-	-	1
Municipal Railway	528	71	312	145
Parking Authority	1	-	-	1
Police	36	4	18	14
Public Health	12	-	6	6
Public Works	71	1	30	40
Recreation and Park	16	1	8	7
Retirement Board	4	-	3	1
Sheriff	4	-	1	3
Unified School District	24	1	3	1
Water	<u>5</u>	<u>1</u>	<u>3</u>	<u>1</u>
Total	712	80	391	241





TABLE 2

TORT ACTIONS CONCLUDED--  
DEPARTMENTS--AMOUNTS PAID

<u>Departments</u>	<u>No. of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Airport	1	\$ 30,000	--
Electricity	3	426,535	--
Fire	5	1,090,905	\$ 19,130
Hetch Hetchy	1	25,000	--
Mayor	1	1,600,000	--
Municipal Railway	528	19,983,385	1,713,675
Parking Authority	1	75,000	--
Police	36	8,179,790	203,910
Public Health	12	2,078,380	23,200
Public Works	71	3,527,865	53,980
Recreation and Park	16	687,235	13,850
Retirement Board	4	--	--
Sheriff	4	1,485,000	--
Unified School District	24	660,000	30,390
Water	<u>5</u>	<u>30,160</u>	<u>8,275</u>
Total	712	\$39,879,255	\$2,066,410





TABLE 3

SUMMARY OF 137 NONTORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Cases</u>
Assessor	9
Board of Supervisors	5
Civil Service	9
Community College	1
Controller	5
County Clerk	1
District Attorney	1
Fire	2
Hetch Hetchy	4
Mayor	2
Municipal Court	6
Municipal Railway	2
Planning	1
Police	14
Public Guardian	1
Public Works	9
Real Estate	20
Recreation and Park	2
Registrar	5
Retirement Board	7
Sheriff	4
Social Services	5
Superior Court	1
Tax Collector	5
Unified School District	10
Water	6
Total	137



TABLE 4

SUMMARY OF WORKMEN'S COMPENSATION  
PROCEEDINGS DURING FISCAL YEAR

<u>Department</u>	<u>No. of Applications</u>
Adult Probation	4
Airport	2
Assessor	1
Controller	2
Coroner	3
de Young Museum	2
Electricity	2
Fire	66
Hetch Hetchy	4
Juvenile Court	5
Mayor	3
Municipal Railway	169
Police	63
Public Health	110
Public Library	3
Public Works	27
Public Utilities Commission	1
Real Estate	2
Recreation and Park	45
Registrar	2
Sheriff	3
Social Services	7
Tax Collector	1
Water	14
Youth Guidance Center	2
Unified School District	64
War Memorial	1
Total	608



TABLE 5

SUMMARY OF CLAIMS FILED DURING FISCAL YEAR

Departments Under Public Utilities Commission

Municipal Railway	2817	
Water	149	
Hetch Hetchy	<u>4</u>	2970

Airports Commission

Airport	<u>78</u>	78
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All Other Departments

Animal Control Commission	1	
Art Commission	2	
Assessor	4	
Board of Supervisors	3	
Chief Administrative Officer	2	
City Attorney	2	
Civil Service	5	
Community College District	2	
Controller	3	
Courts	15	
Criminal Justice Council	1	
District Attorney	1	
Electricity	12	
Fire	66	
Health	95	
Housing Authority	10	
Legion of Honor	2	
Library	2	
Opera House	5	
Parking Authority	1	
Police	542	
Port Authority	23	
Public Defender	1	
Public Utilities Commission	1	
Public Works	404	
Purchaser	4	
Real Estate	4	
Recreation and Park	135	
Registrar	6	
Retirement Board	1	
Sheriff	10	
Social Services	23	
Tax Collector	3	
Treasurer	5	
Unified School District	35	
War Memorial	<u>3</u>	<u>1434</u>

Total

4,482



TABLE 6

SUMMARY OF NEW CASES ASSIGNED DURING FISCAL YEAR

<u>Department</u>	<u>Total Cases</u>
Adult Probation	1
Airport	18
Art Commission	1
Assessor	10
Board of Permit Appeals	5
Board of Supervisors	1
Civil Service	11
Controller	8
County Clerk	1
Courts	11
District Attorney	3
Electricity	3
Fire	1
Health	26
Hetch Hetchy	4
Municipal Railway	393
Opera House	1
Planning Commission	3
Police	98
Port Authority	6
Public Works	123
Public Works: Abatement Cases	234
Real Estate	9
Recreation and Park	17
Registrar	5
Retirement Board	2
Sheriff	2
Social Services	12
Tax Collector	15
Unified School District	39
War Memorial	2
Water	9
Youth Guidance Center	1
Total	<u>1,075</u>





TABLE 7

SUMMARY OF OPEN AND PENDING CASES ON JUNE 30, 1972

<u>Department</u>	<u>Total Cases</u>
Abatement Appeals Board	1
Airport	84
Agriculture	1
Art Commission	2
Assessor	86
Board of Permit Appeals	31
Board of Supervisors	8
Chief Administrative Officer	1
Civil Service	33
Community College District	2
Controller	25
County Clerk	5
Courts	30
District Attorney	3
Electricity	10
Fire	10
Health Department	66
Health Service System	2
Hetch Hetchy	13
Housing Authority	4
Human Rights Commission	1
Juvenile Court	20
Juvenile Delinquency Prevention Commission	1
Library	1
Mayor	3
Municipal Railway	1286
Parking Authority	2
Planning Commission	32
Police	287
Port Authority	2
Probation	1
Public Works	373
Public Works: Abatement Cases	541
Purchaser	1
Real Estate	22
Recreation and Park	42
Registrar	6
Retirement Board	25
Sheriff	13
Social Services	95
Tax Collector	18
Unified School District	106
War Memorial	6
Water	78
Youth Guidance Center	1
Total	3,380



## II. LEGISLATIVE SECTION



## II. LEGISLATIVE SECTION

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

During the past year, this office performed legal work in connection with the preparation, analysis, review or approval of 345 ordinances and 770 resolutions which were enacted or adopted by the Board of Supervisors during the year and performed similar work in connection with 52 proposed Charter amendments and 7 bond issues which were considered by the Board of Supervisors during this period. In addition, considerable work in connection with City and County legislation relating to employees' salaries and service charges was necessitated by the Presidential freeze imposed upon prices and wages on August 15, 1971.

There were 38 formal written opinions rendered and a number of letters of advice sent to the Board of Supervisors during this same period. In addition, at least one deputy from this office was present at each meeting of the Board or of its various committees to give legal advice and assistance with respect to the many problems that arise during the course of such meetings.

Illustrative of the diverse types of legislation which were prepared and approved by this office during the past year are:

#### Sewer Service Charge Ordinance

Imposes a charge for the transportation and treatment of sewage within the City and County.

#### Mobile Caterers Ordinance

Regulates the operation of food-vending vehicles within the City and County.

#### Plumbing Code

Regulates materials used and work performed by the plumbing industry within the City and County.

#### Seismic Investigation and Hazard Survey Advisory Committee Ordinance

Creates committee of experts to advise appropriate City and County officers on steps to be taken to reduce earthquake hazards.





### Refuse Collection Ordinance

Requires all households to make use of refuse collection services.

### Street Artists Ordinance

Regulates activities of street artists and craftsmen within the City and County.

### CALIFORNIA STATE LEGISLATURE

This office provides assistance to the City's legislative advocate in his activities in Sacramento. Two deputies are assigned this task, along with other work, and either or both are in Sacramento two to four days a week, as needed, while the Legislature is in session.

The two deputies review all bills, resolutions, proposed constitutional amendments, and all amendments thereto introduced in the Legislature. The purpose of this review is to determine if there would be any effect on any aspect of city government if the bill should become law. If the bill would apparently relate in some way to operations of the City, a copy is sent to the department head or heads concerned for their review and so they can make a policy recommendation of "support," "oppose" or "no action."

The policy recommendation is then sent to the State Legislation Committee (see Admin. Code §§5.5 et seq.), which meets weekly during the legislative session. At its meetings the bills and policy recommendations are discussed and appropriate policy is formulated, subject to review by the Board of Supervisors. The City Attorney is a voting member of this committee. The policies so formulated are forwarded to Sacramento to guide the legislative advocate in his work.

The two deputy city attorneys in Sacramento attend legislative committee meetings considering the matters upon which City policy has been formulated and express City's support or opposition with reasons therefor, to the committees. They also call on authors of bills, prepare amendments, and consult with individual legislators and their staff people as to City policy on the various bills.

The 1972 Session began before the 1971 Session adjourned in January. As of June 30 there had been introduced in the Legislature a total of 4,445 bills, constitutional amendments, and resolutions. All of these, together with hundreds of amended





versions, were reviewed by deputies from this office, and 947 were sent to various City departments.

The City took a position of "support," "oppose" or "no action" on 346 of these measures.

In addition to the work in Sacramento, other deputies assisted department heads in analyzing many bills sent to department heads for review.

As of the end of the fiscal year, very little legislative action was final. However, shortly after the fiscal year ended final action was taken on four bills introduced at City's request. These were: Senate Bill 549, revising method of computing juvenile probation supervision subsidy to City's financial advantage, passed both houses but was vetoed by the Governor; Senate Bill 1244, modifying trespass laws to enable the Airport to control pirate cabs, passed both houses and signed by Governor; Senate Bill 612, permitting City additional time in which to file for in lieu tax payment on value of motion pictures being produced in San Francisco as of March 1, 1971 (\$60,000), passed both houses and was signed by the Governor; and AB 419, authorizing increase from five to seven commissioners of the Housing Authority, one to be a tenant and one to be over sixty-five passed both houses and was signed by the Governor.

Many other bills of interest to the City were considered and those of major interest concerned "no fault" automobile liability insurance, tax reform to shift some of the burden from property owners to income tax, sales tax and bank and corporation franchise taxpayers, bills relating to public employee labor problems, and various bills relating to coastline development controls. As of June 30, bills on these subjects appeared to be stalemated.

The Legislature was unable to enact a reapportionment bill (on which City took no position) and shortly after the beginning of the new fiscal year the Legislature recessed until after the November 1972 elections in the hope that elective results would precipitate the necessary compromises and a reapportionment bill could be adopted.

Thus, in a major way, this office participated in implementing City policies with respect to legislation.



### III. PUBLIC UTILITIES SECTION



### III. PUBLIC UTILITIES SECTION

This section of the City Attorney's office performed all of the legal services required last year by both the Airports Commission and the Public Utilities Commission, and by the following utilities which are under the latter commission's jurisdiction: Water Department, Hetch Hetchy Project and Municipal Railway.

Deputies assigned to this office section worked under the supervision of the Utilities General Counsel.

The legal services performed for these four utilities' operations included consultations and advice given with regard to legal problems, investigations and settlement of claims, the defense of litigated matters, the drafting and approval as to form of all legal documents and the preparation of written legal opinions upon request.

An enumeration of the many services performed for each utility follows:

#### SAN FRANCISCO INTERNATIONAL AIRPORT

##### Airports Commission

All regular and special meetings of the Airports Commission are attended by the Utilities General Counsel to provide it with legal assistance. In addition, the Utilities General Counsel reviews and approves as to form all documents relating to Airport matters that may come up before the commission.

##### Nonlitigated Matters

Considerable legal work is involved in the administration and operation of San Francisco International Airport, one of the world's busiest commercial airports.

During the past year, this office aided in the negotiation of and prepared two major airport tenant leases. In addition, two leases were modified and three others terminated.

Several written opinions were prepared for the airport relating to questions regarding transportation agreements and airport landing fees. Agreements were also prepared dealing with management of the airport garage and services of airport architects and consultants.





Legal work of a routine nature performed on behalf of the airport consisted of (1) reviews and approvals as to form of insurance policies, certificates of insurance, surety bonds and other legal instruments auxiliary to the various airport leases, concession agreements and space permits, (2) research and answers to inquiries regarding insurance questions, (3) review of all federal Civil Aeronautics Board and State Public Utilities Commission airline applications and miscellaneous filings relating to air fares and routes affecting San Francisco air service, (4) the review of state and federal legislative bills and constitutional amendments, and (5) legal opinions to the Airports Commission and the airport's operating staff.

During the year, this office also attended (1) monthly airport meetings dealing with airport sound abatement, (2) hearings conducted by the National Transportation Safety Board as a result of a Boeing 747 airport accident, (3) meetings in San Diego of the Airport Operators Council, International and (4) conferences in Washington, D.C., with regard to air service capacity limitations and airport control tower funding. In addition, meetings were attended and services regularly performed with regard to the joint study of Bay Area air service requirements (ABAG-BASAR) and with regard to the joint study of a Daly City-San Francisco International Airport extension of BART (SFAAP).

This office also advised on such additional varied matters as annexation of airport property by Millbrae and San Bruno, noise regulation, affirmative action employment practices in airport bid contracts, distributing pamphlets and soliciting on airport property and on the regulation of "pirate" airport taxis and limousines by state, county and city governments.

Because of the extent of airport operations by unauthorized taxicabs, two deputies from this office worked closely with the City's state legislative advocate, and with the airport staff in order to obtain passage of legislation providing stronger control over taxicabs operating at the airport.

#### Litigated Matters

During the past year, several lawsuits seeking damages were settled or defended successfully on behalf of the Airports Commission. Two court actions for inverse condemnation sought damages totaling \$440,000 for the alleged taking and/or damaging of real property as a result of airport jet noise. Both actions were resolved favorably by this office without the payment of any money by way of compensation, and were dismissed by the plaintiffs therein.





A contractual dispute over services rendered which resulted in a lawsuit against the City for damages in excess of \$13,000 was settled favorably for \$3,000 after extensive negotiation by this office.

Three other court actions involving prayers for damages totaling \$110,000 were settled during the year by the City's insurance carrier for \$12,600 without cost or contribution by the City. Two other pending actions against the City were defended in court by the City's carrier at no cost to City. One suit, for \$30,000, was defended successfully. The second suit, for \$100,000 for personal injuries, resulted in an award to plaintiff of \$30,000.

In addition to the foregoing, as well as several other cases still pending from prior years, nine new lawsuits seeking \$6,658,669 in damages were filed against the City during the past year. Seven of these cases relate to personal injuries, and after investigation by this office, they were referred to the airport's insurance carrier for defense in conjunction with this office. The other two seek damages for alleged breach of construction contracts and are being defended by the City Attorney's office.

Actions filed by this office on behalf of the Airports Commission included one for recovery of moneys claimed owing from the previous operators of the airport garage. Another action concerns an airport claim against a tenant's surety for an amount in excess of the surety's bond.

Other litigation which this office section handled on behalf of the Airports Commission during this fiscal year included the proposed merger between American Airlines and Western Air Lines. Following oral arguments before the Civil Aeronautics Board in Washington, D.C., the board upheld the hearing examiner's recommendation against the merger and terminated the two-year proceeding.

In yet other litigation instituted by the State Public Utilities Commission and involving the City as an intervenor, this office both presented witnesses before the Public Utilities Commission to establish the lack of airport taxi and limousine regulation, and helped draft state legislation to establish the needed regulation.

In connection with the filing of future court actions, 72 new claims for money damages allegedly due to the operation of the City's airport were filed during the past fiscal year. Each has been reviewed by this office and a recommendation made to the Airport Department for settlement or denial.



One claim for \$822,839 due to construction delays allegedly caused by the airport was investigated extensively and after long negotiations, the claim has been recommended for settlement by this office for \$312,347.

Another construction claim for \$112,331 has been recommended for settlement for \$42,557.30 after investigation by this office.

#### PUBLIC UTILITIES COMMISSION

All meetings of the Public Utilities Commission are attended by the Utilities General Counsel to provide it with legal assistance. In addition, he reviews and approves as to form all documents relative to utilities matters. This year the Utilities General Counsel reviewed and approved 171 contracts, leases, permits, ordinances and other documents in connection with all four utilities operations.

#### HETCH HETCHY PROJECT

##### Nonlitigated Matters

An important part of the legal work performed for this utility consists of the assignment by this office of a Deputy City Attorney to Sacramento to review and report on all pending state legislation affecting all four utility operations, including Hetch Hetchy operations.

In addition to the foregoing, many conferences were held throughout the year with various ranchers' attorneys in a renewed effort to settle ancient claims against the City for damages to wells and springs allegedly due to construction of the Moccasin Reservoir-Red Mountain Bar siphon aqueduct tunnel.

Other important nonlitigated matters handled by this office during the past fiscal year included research and advice concerning the legality of assessments against Hetch Hetchy right of way lands by the Oakdale Irrigation District and research and legal advice regarding the legality of present power marketing practices under the Raker Act.

##### Litigated Matters

Five new cases allegedly resulted this past fiscal year from operations of this utility.

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One of these actions, filed by a contractor seeking extra compensation in the amount of \$860,657 for work performed in construction of the Kirkwood Powerhouse Penstock was settled for \$99,500 after investigation and negotiations by this office.

Two other actions by a contractor seeking extra compensation of \$100,183 for the furnishing and installation of powerhouse generators were settled by this office for \$45,000.

Two previously pending cases in eminent domain involving City land parcels in Tuolumne County were tried during the past fiscal year. One case resulted in a \$31,089.77 award for the City. The other had judgment entered for the City for the agreed appraisal amount.

In addition, four new claims were received and reviewed by this office and recommendations for payment or denial made thereon.

#### Antitrust Litigation

[A discussion of the legal work performed by this office in connection with antitrust proceedings in which all four utilities, and Hetch Hetchy principally, have an interest, follows.]

#### Plumbing Fixtures

After extensive preparations by this office for trial in these plumbing fixtures proceedings, settlement negotiations were commenced towards the end of last year's fiscal period and have continued throughout most of the 1971-72 year. In large part these negotiations have involved the preparation of covenant agreements and dismissal of the class action; preparation of claims and resolutions approving the settlement and research on conferences, research and costs to be charged against the settlement by the City and other parties.

#### Acoustical Tile

Settlement discussions also continued throughout the past year in this proceeding. In the meantime, this suit continues towards trial with extensive preparation by this office with regard to numerous pretrial motions, interrogatories and depositions. Following close of the fiscal year, a \$40,000 settlement was made with one defendant, Owens-Corning Fiberglass Corp.



### Water Meters

Both preparations for trial and settlement negotiations were conducted simultaneously by this office during the past year and settlement arrangements were finalized with one of the defendants.

### Automobile Fleet Discounts

This is a new proceeding. Extensive investigation and research is being done by this office regarding a possible antitrust legal proceeding by the City against auto manufacturers.

Various other pending antitrust matters involved the legal services of the office. In addition, investigation and research, as well as conferences with other parties, were held throughout the year regarding prospective litigation involving the purchase of such items as tires, plastic, cast iron and concrete pipe, turbines and portable buildings.

## WATER DEPARTMENT

### Nonlitigated Matters

Although considerable legal assistance is rendered to this utility, most of it is of a preventive law nature and does not involve litigation.

For example, numerous agricultural, recreational and commercial lease agreements and land use permits involving the extensive Water Department lands were prepared by this office last year. Conferences with members of the Land Management Bureau of this utility were held routinely for the purpose of resolving legal problems arising from said agreements. In addition, surety bonds, insurance policies, certificates of insurance and other legal instruments ancillary to the foregoing were reviewed and approved as to form.

Early in 1972, this office participated in a study of cost allocations between City and the suburbs for water services and between Hetch Hetchy and this utility with respect to water production and distribution.

\$46,191.42 were recovered by this office section after filing a protest with the State Board of Equalization for excessive valuations of right of way lands by Santa Clara County.





In other matters, this office rendered legal advice to the Water Department on the right of the public to examine customer lists; helped to resolve jurisdictional questions between the Port Commission and Water Department relative to the maintenance and upkeep of water mains on piers, and attended a series of conferences regarding the condition of water service to Castlewood Country Club and the rights of a landowner to the use of the surface of Water Department pipeline rights of way.

In two separate legal opinions, the Board of Supervisors was advised regarding its powers and duties relative to the development of Water Department lands outside the City and County of San Francisco, and the Director of Property was advised that the state could not construct highways over a pipeline right of way without City's consent.

### Litigated Matters

Litigation handled by this office involving the Water Department is summarized as follows:

During the fiscal year ten litigated matters were concluded on behalf of the Water Department, including six eminent domain actions, three actions for property damage and one for personal injuries.

In addition, 18 new cases were filed. Of these, ten are being prepared for trial and six were referred to the City's insurance carrier for defense after investigation and review by this office.

The foregoing litigation covers a wide range of claims. In addition to the foregoing actions for eminent domain and property damage, others are seeking money damages for personal injuries or declarations of rights regarding water and land disputes.

This office also reviewed 141 claims filed against the Water Department (an increase over the previous fiscal year period). Fifty-six claims were compromised and settled without litigation after their review by this office, and the rest were denied.

### MUNICIPAL RAILWAY

Litigation handled by this office which relates to tort claims arising out of Municipal Railway operations are listed separately in the Litigation Section of this year's report.



### Nonlitigated Matters

In nonlitigated matters, this office handled numerous legal issues for this utility.

Many of these issues dealt with the administration of departmental personnel. Numerous hours were spent in conferences helping to resolve questions involving the legality of certain fringe benefit ordinance provisions.

The department's grievance and disciplinary procedures required legal guidance on matters relating to (1) the right to be represented by nonunion representatives, (2) the right to representation at nongrievance hearings, (3) eligibility for holiday pay, (4) effect of grievance procedures on civil service rules, (5) pension rights of union employees on leave from the Municipal Railway department, (6) eligibility for pay supplemental to workmen's compensation payments, (7) funds for witnesses appearing in court and administrative proceedings, and (8) social security coverage and retirement benefits of an employee transferring from the Port Authority to the Municipal Railway.

This office also conducted research and gave written guidance and advice on matters involving the railway and Bay Area Rapid Transit District, experimental steam bus contract, the preparation of an ordinance to establish a Transit Information Fund, the establishment of a gift shop at the cable car barn museum area, the relocation of Water Department pipelines, vandalism, the review of purchasing contracts, and the preparation of other miscellaneous contracts.

In connection with the department's Transit Improvement Program, bid documents were prepared for the joint procurement with the Massachusetts Bay Transportation Authority of 230 subway surface rail cars of which 80 are to be leased to the City by the Municipal Railway Improvement Corporation.

This office also rendered advice and assistance with respect to grievance procedures involving Municipal Railway personnel as well as with respect to the preparation and conduct of disciplinary hearings held before the General Manager of Utilities in his capacity as hearing officer under Charter Section 154.

### Litigated Matters

Several suits were filed in both state and federal courts by employees challenging the City's disciplinary procedures. All were successfully defended by deputies of this office section.





The case of Smith v. Transport Workers Union and the City and County of San Francisco was filed by a group of former Municipal Railway operators seeking benefits provided by the City Transport Workers Union operators' trust fund. This suit was filed just prior to the close of the fiscal year and defense of the case is at a preliminary stage.





IV. SAN FRANCISCO CITY AND COUNTY  
EMPLOYEES' RETIREMENT SYSTEM



#### IV. SAN FRANCISCO CITY AND COUNTY EMPLOYEES' RETIREMENT SYSTEM

##### RETIREMENT BOARD HEARINGS AND OTHER LEGAL MATTERS

The San Francisco City and County Employees' Retirement System is administered and managed by the Retirement Board. A Deputy City Attorney is specifically assigned by the City Attorney to act for this office as counsel for the Retirement Board and the Retirement System. This deputy devotes his full time to the varied legal problems involved in the daily operation of the Retirement System. He attended each of the weekly meetings of the Retirement Board during the past fiscal year for the purpose of advising the Board, cross-examining witnesses, and producing and examining witnesses, so that there would be a full presentation of all pertinent facts to the Board. During the year, this deputy prepared for and participated in the presentation of approximately 161 cases before the Board, many of which required several separate hearings to complete.

The deputy assigned to the Retirement Board also supervises other attorneys in this office who are designated to represent the City and County and the Retirement Board in matters before the State Workmen's Compensation Appeals Board.

##### COURT LITIGATION

This office represents the Retirement System and the Retirement Board both in the courts and before the Workmen's Compensation Appeals Board. Most of the court litigation involving the Retirement System and the Retirement Board concerns the determination by the court as to who is entitled to benefits under the Retirement System, the extent of such benefits, or whether benefits have been improperly denied an employee or his beneficiary. Six cases of this type were concluded during the year.

In addition, this office is called upon to represent the Retirement System in domestic relations litigation involving employees of the City and County who are members of the Retirement System and therefore have funds in the Retirement System. Although it is seldom necessary to prepare pleadings or appear in court in such cases, a considerable amount of time and effort is spent conferring with attorneys representing the parties and assisting them with the legal problems relating to the rights of the parties with respect to the funds in the Retirement System and the benefits payable under the Retirement System.





This office works closely with the investigative staff of the Retirement System to advise them as to the securing of appropriate evidentiary materials for presentation to the Retirement Board and the Workmen's Compensation Appeals Board.

STATE WORKMEN'S COMPENSATION APPEALS BOARD  
PROCEEDINGS AND SUITS IN INTERVENTION

The Retirement Board, pursuant to Section 8.515 of the Charter, administers the benefit provisions of the Workmen's Compensation laws of the State of California for industrial injuries sustained by employees of the City and County, the Unified School District and the Community College District. The City Attorney's office represents the City and County, the Unified School District and the Community College District on behalf of the Retirement System in hearings before the Workmen's Compensation Appeals Board of the State of California. Hearings are held by the Appeals Board in those cases in which the Retirement System denies liability for the alleged injury or denies that the injury occurred, or in which the Retirement System contests that the disability resulted from the alleged injury, or in which the Retirement System contests the extent of the claimed disability.

During the past year, 608 applications for Workmen's Compensation benefits were filed or pending before the Appeals Board. As a result, this office prepared for and participated in 620 hearings before the Appeals Board. The hearings involved applications for benefits filed by employees of the following departments or agencies: Adult Probation, Airports Commission, Controller, Coroner, Electricity, Fire, Hetch Hetchy, Juvenile Court, Mayor, Municipal Railway, Police, Public Health, Public Library, Public Works, Public Utilities Commission, Real Estate, Recreation and Park, Registrar of Voters, Sheriff, Social Services, Tax Collector, Water, Youth Guidance Center, Unified School District and de Young Museum.

The City Attorney also represents the City and the Retirement System with respect to the City's right of subrogation against third parties who negligently cause injury to City employees, whereby reimbursement is obtained for the amount of compensation paid and medical costs expended by the City for the benefit of such employees as a result of their injuries. Where a City employee is injured in the course of his employment by a third party and thereafter commences an action in his own behalf against that third party, the City has the right to intervene in that action in order to recover the amount of the benefits paid to or on behalf of the City employee. During the past year, this office concluded six suits in intervention, resulting in the recovery of a total sum of \$22,290.97. In addition, reimbursement in the total sum of \$60,206.92 was obtained by way of settlement without litigation in 33 other subrogation matters.





V. RATE SECTION



## V. RATE SECTION

The City Attorney's office is charged with the responsibility of representing the City in legal proceedings which affect the City and County of San Francisco and its residents.

One area of action involves the representation of the City's interests before regulatory agencies on matters which will directly affect the City of San Francisco and its residents. During the past year, this office was actively engaged before administrative tribunals with respect to matters ultimately affecting the financial interests of the City of San Francisco ratepayers. The scope of the proceedings involved rates, service, rules and regulations of the public utility companies serving the City of San Francisco.

Participation by a Deputy City Attorney and the Rate Engineer included attendance at hearings and the issues involved required extensive preparation and research.

### FEDERAL POWER COMMISSION

Currently there is before the Federal Power Commission requests for increases in natural gas rates subject to refunds which ultimately affect the price paid for natural gas by City customers. One of the major considerations in the price of natural gas the consumer must pay to heat and cook with is the price Pacific Gas & Electric Company must pay for its purchased gas. Pacific Gas & Electric's three sources of natural gas are California Producers, El Paso Natural Gas Company and Pacific Gas Transmission Company. Gas delivered by El Paso Natural Gas Company comes from the Permian Basin area in Texas and New Mexico, and gas delivered by the Pacific Gas Transmission Company comes from Alberta, Canada. When feasible, this office participates before the Federal Power Commission with other cities and the California Public Utilities Commission in order to keep the rates charged by the producers as low as possible because this price is passed on to the pipeline companies which in turn pass on the cost to the California distributing companies. In recent years the price of gas at the source has been increasing at a considerable rate.

### CALIFORNIA PUBLIC UTILITIES COMMISSION

At the beginning of the fiscal year, Pacific Gas & Electric Company had pending increases in both the gas and electric rates. The California Commission in Application 52490 filed in March of 1971 authorized increases in electric rates



to offset increased expenses related to natural gas used to generate steam in the company's large steam electric plants. This increase was necessitated by the increased price of natural gas from out of state.

In Application 52565 Pacific Gas & Electric Company was seeking increases totaling \$37 million in its natural gas rates. It was this requested increase that was responsible for the company's filing Application 52490. In its decision the commission authorized the increase requested by the company.

Again, in March of 1972, the company requested authorization to adopt a fuel cost adjustment clause for inclusion in its electric rates (A-53185) and in its steam sales system tariff (A-53227). No hearings have been held to date regarding these two applications. If approved, they would allow the company to increase immediately the present authorized rates in an amount to cover any increase in fuel costs at that particular time.

On July 23, 1971, the California Commission granted to the Pacific Telephone & Telegraph Company an annual increase of \$143 million in rates. The cities of San Francisco, Los Angeles and San Diego petitioned the State Supreme Court for a writ of review. That writ was granted in November 1971, and oral argument was held in February 1972. In October 1971 the Pacific Company filed for an offset in labor costs totaling \$87 million. Hearings were held in December and January and the matter was submitted for commission decision. During the hearings, the company amended the application and lowered its request to \$77 million. In April of 1972 the Commission authorized a \$69 million increase in rates to offset the increased labor costs.

On June 9, 1972, the State Supreme Court in a unanimous decision, annulled the decision of the commission in July of 1971 authorizing the increase of \$143 million. The company then petitioned for rehearing which was denied and review was sought by the company with the United States Supreme Court. This review was also denied and the order of the State Supreme Court became final.

One of the major reasons for annulling this decision was the fact that the commission refused to let the City and County of San Francisco introduce testimony and evidence supporting its position with regard to accelerated depreciation with flow through. The California Commission in 1968 criticized the company's management for not adopting accelerated depreciation with flow through. Subsequently, the company refused to take accelerated depreciation until the federal







law was changed in 1969. As a result of this change, the company then applied to the California Commission for authority to change its method of depreciation from straight line to normalization. The decision of the commission approving this change, which did not involve rates, was appealed to the State Supreme Court which in turn annulled the accounting order of the commission in November of 1971--some four months after the decision authorizing the \$143 million increase, which increase was based upon normalization accounting for accelerated depreciation instead of flow through.

As a result of the State Supreme Court's order, the company applied for \$198 million in interim relief. The commission held oral argument on the company's motion and the examiner indicated he would recommend a course of action, which the commission adopted one week later. On August 16, the commission issued three decisions: one, re-established the rate level of 1968 as set forth in the court's opinion annulling the decision and authorized the company to increase rates totaling \$55.4 million instead of \$143 million; two, it re-established the \$69 million wage offset rates as the court did not have that case properly before them; and, three, the commission issued an order directing refunds with interest totaling some \$165 million with approximately \$27 to \$30 million being refunded to San Francisco business and resident customers.

At the present time the company has reapplied to the California Commission for an immediate emergency increase of some \$103.3 million to offset increased operating costs in the last two years, as well as a final application for some \$328 million in permanent rates.

#### OTHER MATTERS

This office also offered other City departments its assistance in rate matters affecting tow-away rates and taxicab rates. In each instance the rate expert in the City Attorney's office was called upon to review the requested rate increase and to make recommendations as to any changes.



VI. SERVICES RENDERED TO CITY DEPARTMENTS  
RECOMMENDATIONS



## VI. SERVICES RENDERED TO CITY DEPARTMENTS

### RECOMMENDATIONS

In the previous sections of this report the legal work of this office in connection with particular departments and in connection with court litigation has been outlined. However, a major part of the nonlitigation legal work of this office consists of the legal services performed and rendered for the 44 other departments and offices of the City and County government, for the Municipal and Superior Courts, the Parking Authority, the Housing Authority, the Redevelopment Agency, the San Francisco Unified School District and the San Francisco Community College District, as well as legal informational services for members of the public and for other public jurisdictions.

While no complete statistical record is kept of the total number of requests for such services during the course of the fiscal year it is roughly estimated that they are well in excess of 10,000. Such services consist in the main of document preparation, review and approval such as contracts, leases, bonds, securities, insurance policies, civil service documents, applications for federal and state grants, title policies and reports, etc.; the preparation, review and approval of all documents and matters involved in general obligation and revenue bond issues; oral and written legal opinions and advice to employees, officers, departments, boards and commissions of the City and County, to the Municipal and Superior Courts, to the school districts and to the other agencies of government who perform services for the City and County; oral and written information and advice to members of the public and to other public jurisdictions on the Charter, ordinances, City and County legal procedures and written opinions issued by this office; attendance and advice at employee disciplinary hearings conducted by departments; attendance and advice at license and permit hearings; attendance and representation of the Probation Officer and Social Services Department at Juvenile Court proceedings; preparation and prosecution of child abandonment proceedings in the Juvenile Court; representation of the Assessor's office at equalization hearings conducted by the Assessment Appeals Board; attendance and advice at meetings of the Business Tax Board of Review; attendance and advice at meetings of boards and commissions; office conferences and meetings with officers and representatives of departments, etc.

To cite a few recorded statistics during the past year, 154 contracts of one department alone, the Department of Public







Works, were prepared or reviewed and approved. There were 201 written opinions issued during the year, of which 84 were selected because of their nature and precedential value for general distribution to City departments and other persons interested in such written opinions. There were 69 Juvenile Court appearances and this office represented the Assessor before the Assessment Appeals Board in 72 assessment appeals. Many of the hearings on these appeals extend for three or four days.

The legal services and work requirements of some of the City and County departments, not discussed in previous sections of this report, such as Civil Service, Planning, Real Estate, Tax Collector and Assessor, the Department of Public Works, Juvenile Court and the Department of Social Services, require the constant work time of one or more deputies of this office. These services are strictly aside and in addition to the time involved in the litigated matters that pertain to such departments. The work of the Assessment Appeals Board and the requirements of the Juvenile Court are particularly time-consuming and these two offices are singled out as the bulk of the services performed for them has been made necessary by changes in state legislation which has imposed additional legal work requirements on this office and no provision has been made for additional deputies to perform such work. For example, as indicated above, there were 69 Juvenile Court appearances in the fiscal year 1971-72. Due mainly to a change in state law effective in January 1972, it is anticipated that approximately 300 such appearances will be required in the current fiscal year, 1972-73.

Numerous federal and state sponsored programs, mainly handled through the Mayor's office, are another development which has considerably added to the work load of this office in the past few years. The services required by this recent development call for legal opinions and advice, considerable document preparation, review and approval, attendance at meetings and review and analysis of federal laws, regulations and directives relating to such programs.

The statistics on litigation handled by this office are covered in Section I of the report. During the past ten years there has been a considerable increase in the volume of litigation. This is illustrated by the fact that at the conclusion of the 1962-1963 fiscal year there were 1480 legal actions pending in the office. At the end of this fiscal year there were 3380 suits pending in this office. The statistics show that there has been an annual increase in the number of claims and suits filed against the City. A number of suits presently pending represents a new and increasing type of lawsuit in which



the City has been involved during the past several years. The accelerated code enforcement program has been outlined in Section I. Currently there are 541 abatement cases pending in this office. Legal challenges to various laws and City procedures has become the source of increasing and time-consuming legal work in this office. The source of this litigation is primarily from attorneys representing public law groups such as San Francisco Neighborhood Legal Assistance Foundation, Youth Legal Center, Public Advocates, Inc., etc., who have filed a number of cases against the City and its officers involving the Unified School District, Police and Social Services Departments, etc. Most of 101 cases currently pending in the federal court are cases of this character and these cases, as well as similar cases pending in the state courts, require extensive pleadings, court appearances and briefs to the court in an expeditious and thorough manner which requires increased time of the deputies in this office. An example of this type of case currently pending in the office is the action recently filed against the judges of the Superior Court challenging the manner in which the Grand Jury is selected in San Francisco.

In view of the legal services required to be rendered by this office, it is imperative that additional deputies be added to the office. In this connection it is to be noted that in 1960 there were 37 deputy city attorneys in this office and 12 years later in 1972 there are only 39 deputy city attorneys budgeted for this office. The salary of one additional attorney has been paid for with federal funds from the F.A.C.E. program. As contrasted with this situation, it is to be noted that the District Attorney's office has been allowed, justifiably, during that period 19 additional deputies and the Public Defender's office 20 additional deputies to compensate for the comparable ever increasing work load in those offices.

The compensation paid to deputies in this office is at least 15% below comparable public jurisdictions and private law office salaries. The staff of this office is overburdened and underpaid and the only way this office manages to keep abreast of the heavy work load is by performing considerable overtime work. The heavy work load and sub-par compensation paid to the deputies in this office has caused a far greater number of voluntary resignations of experienced deputies from the staff in the past five years than has been at any other five-year period in the City Attorney's office. In view of the highly specialized nature of municipal law work and the great value of experience in it and the complex and extensive nature of the tort, contract and constitutional law litigation handled by this office, these resignations are definitely not in the best interests of the City and County. It is my urgent recommendation that the root causes be removed or at the very least ameliorated by the allowance of additional deputies to the staff





of the City Attorney's office and by adjustments in their compensation to bring the lawyers in this office at least on a par with other comparable public jurisdictions.







ANNUAL REPORT OF THE CITY ATTORNEY  
CITY AND COUNTY OF SAN FRANCISCO

JULY 1, 1972 - JUNE 30, 1973

THOMAS M. O'CONNOR  
CITY ATTORNEY



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## I. LITIGATION





## I. LITIGATION

The City Attorney's office handles civil litigation involving the City and County and the San Francisco Unified School District.

### 1. LITIGATION CONCLUDED IN FISCAL YEAR.

Actions were concluded during the 1972-73 fiscal year as follows:

Tort Actions	609
Nontort Actions	143
Abatement Actions	209
Workmen's Compensation Proceedings	366
Appellate Litigation	<u>16</u>
Total	1,343

#### Tort Litigation.

The 609 tort actions concluded sought damages for injuries to persons and property, and for death. For Summary of Departments, Judgments Paid, Settlements, and Cases Won or Dismissed, see Tables 1 and 2 at the end of this chapter.

#### Nontort Litigation.

The 143 nontort actions concluded were writ proceedings (mandamus, prohibition, certiorari) and contract, eminent domain, tax, antitrust, and injunction actions. For Summary of Departments involved, see Table 3 at the end of this chapter.

#### Abatement Actions.

These are actions to abate nuisances from violations of building, health, housing and related laws and ordinances, instituted after unsuccessful efforts of the departments concerned to eliminate the nuisance.

In fiscal 1972-73, 325 cases were referred to this office and 274 actions were filed. Of the 209 cases closed, 89 resulted in rehabilitation and 59 in demolition of the premises. 661 cases are pending.

The present level of activity in the abatement cases requires approximately three court appearances each day. This activity requires the full-time attention of two deputies and the part-time participation of another ten deputies.



## Federal Litigation.

This office has represented in the federal courts the School District and a number of departments whose policies or procedures have been challenged on federal grounds.

101 federal court actions, 14 of them antitrust actions, are pending.

## Workmen's Compensation Proceedings.

Proceedings before the Workmen's Compensation Appeals Board concern applications filed by employees of City and the School District, or their dependents, for compensation for injuries or death incurred within the scope of employment. This office attended 686 hearings relating to 568 applications. 366 cases were concluded during the fiscal year.

For a Summary of Applications from each department and agency, see Table 4 at the end of this chapter. For further details, see Chapter V of this report.

## Appellate Litigation.

The 16 appellate cases concluded are:

1. Bauer-Schweitzer Malting Co., Inc. v. City and County of San Francisco, 8 C.3d 942. Affirmed a Superior Court judgment for City and County in suit for ad valorem tax refund. Personal property escaped assessments were sustained on basis of Article XI, Section 12, California Constitution and Revenue and Taxation Code Sections 531, 533 and 534.

2. Bunkley, et al. v. Municipal Court of the State of California, 1 Civil 29317 (nonpublication). The Court of Appeal for the First Appellate District affirmed an order of the Superior Court of San Francisco denying the petition for writ of mandate and prohibition and discharging the alternative writ of mandate. The writ of mandate in the lower court was sought to challenge the requirements imposed upon persons seeking to file in forma pauperis.

3. DeFoe v. San Francisco City Planning Commission, 1 Civil 30789 (nonpublication). Action brought challenging the constitutionality of City Planning Code restricting the number of homes for more than two mentally retarded children in Zones R-1 and R-1-D. While the matter was pending before the appeals court the state law governing this issue was changed and the court being thus informed, remanded the case to the trial court for further proceedings on May 30, 1973.

4. DeMerritt v. City and County of San Francisco, 1 Civil 29547 (nonpublication). Reversed a judgment for City and County of San Francisco in employees class action to compel





Salary Standardization Ordinance to be effective July 1, rather than July 15.

5. England v. City and County of San Francisco, 1 Civil 29357 and Braverman v. City and County of San Francisco, 1 Civil 29358 (nonpublication). The Court of Appeal reversed judgment in favor of the City in action in inverse condemnation and held that a city is liable for damages resulting from impairment of access to real property abutting a public street by the city's reconstructing and raising the actual grade of the street to the officially established grade to which it had been constructed many years before and below which the street and abutting property had subsided over the years.

6. Guidry v. Department of Social Services, City and County of San Francisco, 1 Civil 30756. The Court of Appeal affirmed the trial court's dismissal of a petition for adoption by a person not qualified to so petition pursuant to Civil Code 2249(n).

7. Heslet v. City and County of San Francisco, 1 Civil 27646 (nonpublication). Plaintiff, a taxpayer, alleged three causes of action challenging the vacation and sale of portions of Lombard and Montgomery Streets. Court of Appeal affirmed City on two causes of action and reversed on one regarding the valuation of the vacated street area on the basis of the Harmon case, 7 C.3d 150.

8. Lau v. Nichols, 472 F.2d 909. Ninth Circuit Court of Appeals affirmed the decision of the United States District Court holding that the San Francisco Unified School District did not have the constitutional duty to provide special English instruction to non-English speaking students. This case is now before the United States Supreme Court on a writ of certiorari.

9. Mahoney v. City and County of San Francisco Employees Retirement Board, 30 C.A.3d 1. Reversed a decision of the Retirement Board denying an application of a member of the Fire Department for industrial disability retirement.

10. Murphy v. City and County of San Francisco, 1 Civil 29696 (nonpublication). Affirmed a judgment denying mandamus where former Deputy City Attorney claimed that he was entitled to highest step on salary schedule upon being appointed as Deputy District Attorney after a 10-year break in service.

11. Pedersen v. City and County of San Francisco, 1 Civil 29347 (nonpublication). Court of Appeal affirmed a judgment in favor of the City in an action for wrongful death and personal injuries resulting from the beatings on an elderly husband and wife administered by escaped prisoners from the County Jail in San Bruno.

12. San Francisco Planning Association v. Central Permit Bureau, 30 C.A.3d 920. Court of Appeal affirmed the Superior

1. The Commission on the Status of Women was established by the Economic and Social Council of the United Nations in 1946. Its mandate was to study the position of women in all countries and to make recommendations for their improvement. The Commission has since that time held several sessions and has produced a number of reports and resolutions. One of its main tasks has been to study the legal position of women in various countries and to make recommendations for their improvement. The Commission has also held a number of expert group meetings on various subjects related to the status of women.

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Court's decision refusing to grant writ of mandate restraining the issuance of a permit to build. This case involves the Environmental Quality Act and requirement of filing an Environmental Impact Report prior to the issuance of a building permit.

13. Stenmark Construction Co. v. City and County of San Francisco, 1 Civil 28426 (nonpublication). The Court of Appeal affirmed judgment in favor of contractor against the City and County for damages resulting from delays caused by modifications necessary to correct errors in the original design of the building to be constructed.

14. Thullander v. Workmen's Compensation Appeals Board and the City and County of San Francisco, 1 Civil 32299 (nonpublication). Sustained decision of Workmen's Compensation Appeals Board that police officer did not sustain industrial injuries.

15. Topacio, Joseph Jr., In the Matter of, 1 Civil 31481 (nonpublication). Court of Appeal affirmed trial court's decision regarding the propriety of evidentiary ruling in the Juvenile Court denying the request and admission of a lie detector test.

16. Wilson v. San Francisco Municipal Railway and Transport Workers Union, 29 C.A.3d 870. Court of Appeal affirmed trial court's denial of a petition for writ of mandate seeking to require that an administrative hearing dealing with a dismissal of an employee be opened to the public.

## 2. CLAIMS.

4,758 claims were filed during the fiscal year. Filing of a claim is a prerequisite to institution of suit. This office handles investigation, review, evaluation and disposition of claims. For Summary of Claims by Department, see Table 5 at the end of this chapter.

56 Late Claim Applications were considered and acted upon by this office and reported to the Board of Supervisors or Public Utilities Commission.

## 3. LITIGATION PENDING AT END OF FISCAL YEAR.

1,073 actions were filed during the fiscal year. For summary of cases by department, see Table 6 at the end of this chapter.

3,442 actions were open and pending at the close of the fiscal year. For a summary of pending cases by department, see Table 7 at the end of this chapter.



TABLE 1

SUMMARY OF 609 TORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Cases</u>	<u>Judgments Paid</u>	<u>Litigated Settlements</u>	<u>Won or Dismissed</u>
Electricity	3	-	1	2
Fire	4	1	2	1
Municipal Railway	444	33	345	66
Police	38	3	14	21
Public Health	10	2	1	7
Public Works	72	1	48	23
Recreation & Park	11	1	5	5
Sheriff	2	1	1	-
Unified School District	16	1	7	8
War Memorial	1	-	-	1
Water	<u>8</u>	<u>1</u>	<u>5</u>	<u>2</u>
Total	609	44	429	136



TABLE 2

TORT ACTIONS CONCLUDED--  
DEPARTMENTS--AMOUNTS PAID

<u>Departments</u>	<u>No. of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Electricity	3	\$ 495,870	\$ 470
Fire	4	379,730	33,500
Municipal Railway	444	27,306,200	2,430,180
Police	38	8,136,145	90,335
Public Health	10	3,209,120	1,270
Public Works	72	4,495,220	164,085
Recreation & Park	11	2,026,875	31,750
Sheriff	2	575,000	100,250
Unified School District	16	3,870,695	549,725
War Memorial	1	35,000	-
Water	<u>8</u>	<u>99,820</u>	<u>13,970</u>
Total	609	\$50,629,675	\$3,415,535





TABLE 3

SUMMARY OF 143 NONTORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Actions</u>
Airport	3
Assessor	12
Board of Permit Appeals	1
Board of Supervisors	2
Civil Service	1
Controller	5
County Clerk	3
Health Service System	1
Hetch Hetchy	2
Juvenile Court	2
Mayor	3
Municipal Court	8
Municipal Railway	3
Planning	4
Police	13
Port Authority	1
Public Health	1
Public Works	8
Real Estate	6
Recreation and Park	3
Registrar	4
Retirement	8
Sheriff	2
Social Services	30
Superior Court	2
Tax Collector	1
Unified School District	8
Water	<u>6</u>
Total	143



TABLE 4

SUMMARY OF WORKMEN'S  
COMPENSATION PROCEEDINGS

<u>Department</u>	<u>No. of Applications</u>
Adult Probation	2
Airport	3
Controller	1
Coroner	3
de Young Museum	1
Electricity	5
Fire	48
Hetch Hetchy	4
Juvenile Court	4
Municipal Court	4
Municipal Railway	125
Police	59
Public Health	134
Public Works	37
Purchasing	1
Real Estate	1
Recreation and Park	29
Registrar of Voters	2
Sheriff	5
Social Services	2
Water	13
Weights and Measures	1
Youth Guidance Center	5
Unified School District	<u>79</u>
Total	568





TABLE 5

SUMMARY OF CLAIMS FILED DURING FISCAL YEARDepartments Under Public Utilities Commission

Municipal Railway	2,938	
Water	<u>109</u>	3,047

Airports Commission

Airport	58	58
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All Other Departments

Adult Probation	2	
Board of Supervisors	2	
City Attorney	3	
City Planning	1	
Civil Service	1	
Community College	2	
Controller	2	
Courts	5	
District Attorney	2	
Electricity	22	
Fire	57	
Health	114	
Housing Authority	11	
Library	2	
Mayor	2	
Palace of Fine Arts	1	
Parking Authority	1	
Police	580	
Port Authority	73	
Public Works	485	
Purchaser	2	
Real Estate	5	
Recreation and Park	134	
Redevelopment	25	
Registrar	5	
Retirement	3	
Sheriff	36	
Social Services	20	
Tax Collector	4	
Treasurer	3	
Unified School District	42	
War Memorial	1	
Youth Guidance Center	<u>5</u>	<u>1,653</u>

Total

4,758



TABLE 6

SUMMARY OF ACTIONS FILED  
DURING FISCAL YEAR

<u>Department</u>	<u>No. of Actions</u>
Airport	18
Assessor	6
Board of Permit Appeals	4
Board of Supervisors	1
Chief Administrative Officer	1
Civil Service	6
Community College District	2
Controller	1
County Clerk	2
Courts	5
Electricity	2
Fire	5
Health	27
Hetch Hetchy	1
Housing Authority	2
Legion of Honor	1
Mayor	1
Model Cities Agency	2
Municipal Railway	359
Opera House	2
Parking Authority	2
Planning Commission	2
Police	80
Port Authority	3
Public Utilities Commission	1
Public Works	112
Public Works: Abatement Cases	325
Real Estate	4
Recreation and Park	18
Redevelopment Agency	4
Registrar	3
Retirement Board	7
Sheriff	5
Social Services	4
Tax Collector	8
Unified School District	33
War Memorial	1
Water	12
Youth Guidance Center	1
Total	1,073



TABLE 7

SUMMARY OF OPEN AND PENDING CASES ON JUNE 30, 1973

<u>Department</u>	<u>Total Cases</u>
Adult Probation . . . . .	2
Airport . . . . .	79
Art Commission . . . . .	2
Assessor . . . . .	87
Board of Permit Appeals . . . . .	41
Board of Supervisors . . . . .	10
Chief Administrative Officer . . . . .	3
Civil Service . . . . .	40
Community College District . . . . .	4
Controller . . . . .	20
County Clerk . . . . .	4
County Recorder . . . . .	4
Courts . . . . .	25
District Attorney . . . . .	2
Electricity . . . . .	9
Farmer's Market . . . . .	1
Fire . . . . .	15
Hetch Hetchy . . . . .	13
Housing Authority . . . . .	7
Human Rights Commission . . . . .	1
Juvenile Court Probation . . . . .	47
Juvenile Delinquency Prevention Commission	1
Library . . . . .	2
Legion of Honor . . . . .	1
Mayor . . . . .	3
Model Cities Agency . . . . .	2
Municipal Railway . . . . .	1,145
Museum of Art . . . . .	1
Opera House . . . . .	4
Parking Authority . . . . .	3
Planning Commission . . . . .	28
Police . . . . .	298
Port Authority . . . . .	2
Public Health . . . . .	84
Public Works . . . . .	393
Public Works: Abatement Cases . . . . .	661
Purchaser . . . . .	2
Real Estate . . . . .	23
Recreation and Park . . . . .	56
Redevelopment Agency . . . . .	8
Registrar . . . . .	8
Retirement Board . . . . .	25
Sheriff . . . . .	17
Social Services . . . . .	23
Tax Collector . . . . .	39
Unified School District . . . . .	110
War Memorial . . . . .	3
Water . . . . .	79
Youth Guidance Center . . . . .	3
Zoning Administrator . . . . .	2
Total . . . . .	3,442





## II. LEGISLATIVE SECTION



## **II. LEGISLATIVE SECTION**

### **BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO**

During the past year, this office performed legal work in connection with the preparation, analysis, review or approval of 437 ordinances and 827 resolutions which were enacted or adopted by the Board of Supervisors during the year and performed similar work in connection with 46 proposed Charter amendments and 2 bond issues which were considered by the Board of Supervisors during this period.

There were 85 formal written opinions rendered and a number of letters of advice sent to the Board of Supervisors during this same period. In addition, at least one deputy from this office was present at each meeting of the Board or of its various committees to give legal advice and assistance with respect to the many problems that arise during the course of such meetings.

Illustrative of the diverse types of legislation which were prepared and approved by this office during the past year are:

An ordinance prohibiting the emission or creation of noise beyond certain levels.

A comprehensive ordinance creating height districts within the City and County.

An ordinance creating a Commission on Aging.

An ordinance creating a Relocation Appeals Board.

An ordinance establishing a local rent supplement program.

An ordinance establishing procedure with respect to environmental impact statements.

Extensive amendments to the Sewer Service Charge Ordinance.

In addition to the foregoing, there were a series of ordinances establishing or revising regulations relating to pawnbrokers, massage parlors, public bath houses, private protection and security services, tow car operators and topless entertainment.

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## CALIFORNIA STATE LEGISLATURE

San Francisco contracts with an independent legislative advocate to represent its interests before the Legislature in Sacramento.

Two deputies are assigned to assist in this task, along with other work, and either or both are in Sacramento two to four days a week, as needed, while the Legislature is in session.

The two deputies review all bills, resolutions, proposed constitutional amendments, and all amendments thereto introduced in the Legislature. The purpose of this review is to determine if there would be any effect on any aspect of city government if the bill should become law. If the bill would apparently relate in some way to operations of the City, a copy is sent to the department head or heads concerned for their review and so they can make a policy recommendation of "support", "oppose" or "no action."

The policy recommendation is then sent to the State Legislation Committee (See Admin, Code §5.5 et seq.), which meets weekly during the legislative session. At its meetings the bills and policy recommendations are discussed and appropriate policy is formulated, subject to review by the Board of Supervisors. The City Attorney is a voting member of this committee and attends regularly with at least one deputy. The policies so formulated are forwarded to Sacramento to guide the legislative advocate in his work.

The two deputy city attorneys in Sacramento attend legislative committee meetings considering the matters upon which City policy has been formulated and express City's support or opposition with appropriate reasons, to the committees. They also call on authors of bills, prepare amendments, and consult with individual legislators and their staff people as to City policy on the various bills.

The 1973 session is the first under the 1972 constitutional amendment providing for biennial sessions. Thus, 1973 is the first year of a two-year session. However, bills that achieve final passage by September 15, and which are not vetoed, will become law in January 1974. Bills that pass thereafter, except for urgency measures will become law in January 1975.

As of June 30 there had been introduced in the Legislature a total of 4,337 bills, constitutional amendments, and resolutions. All of these, together with hundreds of amended versions were reviewed by deputies from this office, and 1057 were sent to various City departments.





The City took a position of "support", "oppose" or "watch" on 449 of these measures.

In addition to the work in Sacramento, other deputies assisted department heads in analyzing many bills sent to department heads for review.

Of particular interest and requiring extensive effort in Sacramento in the fall of 1972 was AB 889 (KNOX), which became the Environmental Quality Act, and SB 90 (DILLS). The latter had the support of San Francisco and limits tax rate levels and provides for state funding of costs imposed on local governments by state action. This law has presented problems and in the spring of 1973 AB 2008 (KNOX) was moving through the Legislature to "clean-up" some of the problems posed by SB 90.

Other bills affecting San Francisco's interests included SB 59 (CARPENTER), authorizing airport security officers to become peace officers (discussed in another part of this report under "Airport"); AB 232 (POWERS) calling for state P.U.C. regulation of taxicabs serving airports, SB 160 (NEJEDLY) relative to establishing BARTD service to the original planned areas, before it is established elsewhere, meaning from San Francisco to the Airport; SB 534 (WALSH), which would require state approval before any improvements could be built that would improve air passenger hauling capacity; and AB 2299 (BURTON), which would give the San Francisco Port certain sand and gravel revenues from certain underwater removal sites.

Many other bills of interest to the City were considered and those of major interest concerned "no fault" automobile liability insurance, bills relating to conforming state welfare laws and federal requirements, bills relating to public employee labor problems, and various bills relating to environmental controls. As of June 30, bills on these subjects appeared to be stalemated.

Thus, in a major way, this office participated in implementing City policies with respect to legislation.



### III. PUBLIC UTILITIES SECTION





### III. PUBLIC UTILITIES SECTION

Deputies assigned to the Public Utilities Section of the City Attorney's office work under the supervision of a Public Utilities Counsel (Utilities General Counsel). They perform all legal services for both the Airports Commission (San Francisco International Airport) and the following public utilities which are under Public Utilities Commission jurisdiction: Water Department, Hetch Hetchy Project and Municipal Railway. Legal work performed during the past fiscal year for all utilities included the handling of litigation, the drafting and review of legal instruments as well as consultation and legal advisory services to the administrative staffs.

An enumeration of the services performed for each utility follows:

#### SAN FRANCISCO INTERNATIONAL AIRPORT

##### Litigated Matters

Seven new lawsuits involving airport operations were filed against the City and County of San Francisco during the fiscal year. Two actions for \$1 million involving personal injuries were referred to the airport's insurance carrier for defense in conjunction with this office. Two actions requested declaratory relief against State airport service standards and the airport expansion program. One eminent domain action sought to condemn airport property for State highway purposes. One action, brought on behalf of the City against a former airport garage operator, was settled for \$145,953 and a second action for assault and battery by an airport policeman was compromised and settled by City's insurance carrier for \$5,750 without cost to or contribution by the City.

During the past year, this office also appeared in support of Airports Commission air service policies before the Civil Aeronautics Board in the case of the Reopened Service to Omaha and Des Moines Case, Docket No. 18406. This case seeks to provide additional air service between San Francisco and the Omaha/Des Moines area as well as between Omaha/Des Moines and other continental points.

In connection with the handling of litigation, this office also reviewed and recommended settlement or denial of 68 claims for damages filed against the City in connection with operations of the Airport.



## Nonlitigated Matters

During the fiscal year 7 major leases, 5 subleases, 4 concession contracts, 4 space permits and 3 service agreements were prepared and reviewed by this office. In addition, this office helped negotiate and prepare a major new long term maintenance base lease for United Airlines operations at the airport as well as a new 5 year landing fees agreement with the scheduled air carriers serving San Francisco International Airport.

Other legal work undertaken by this office for the Airports Commission involved negotiations, compromise and a \$822,839 settlement for damages resulting from airport work delays; conferences relative to airport construction contract matters; work for construction of interstate route 380 to the airport and letter opinions concerning the imposition of head taxes on airline passengers, San Mateo County police protection and State Bay Construction and Development Commission (BCDC) requirements vis-a-vis airport development. Furthermore, this office engaged in various legal conferences relating to the Sound Abatement Center at San Francisco International Airport and to problems involving Airport Security. In connection with the latter problems, a petition for temporary exemption from the provisions of Federal Aviation Regulation No. 107 which requires the presence of armed law enforcement officers vested with police power of arrest was filed with the Federal Aviation Administrator since airport police have no arrest power under State law; emergency State legislation was drafted conferring peace officer status in airport police; an agreement was prepared to enable the San Mateo County Sheriff to deputize airport police as required by Federal Airports Regulation 107; agreements were signed to permit Federal Marshals and custom agents to screen airport passengers pending the adoption of the requisite State legislation conferring peace officer status on Airport police.

The necessity of close security checks of boarding passengers by the airport security officers prompted City support of Senate Bill 59, which would give these men peace officer status. The bill passed in the last few days of June 1973 and was signed by the Governor. It authorizes the Board of Supervisors or the Police Commission to commission airport security officers as peace officers, if the Sheriff of San Mateo County gives his consent or deputizes them.

A substantial amount of office time was also devoted to matters dealing with the Environmental Impact Report for the Airport Expansion Program.

The California Environmental Quality Act of 1970 as





recently amended, effective December 5, 1972, required the California Resources Agency to adopt Guidelines for the Implementation of the Act and local agencies to adopt procedures for such implementation.

Prior to the adoption of the State Guidelines on April 5, 1973, a draft of the Environmental Impact Report (EIR) for the Airport Expansion Program was prepared by Airport staff and reviewed by this office. During the month of March, 3 public hearings were held. The final EIR was adopted by the Airports Commission on May 1, 1973. On May 17, 1973, an action was filed in Superior Court contesting the validity of all actions taken relative to the Airport Expansion Plan on the ground of noncompliance with the California Environmental Quality Act.

#### Director of Airports

All regular and special meetings of the Airports Commission are attended by the Utilities General Counsel to provide it with legal assistance. In addition, the Utilities General Counsel reviews and approves as to form all documents relating to airport matters. The Utilities General Counsel, as well as other members of the utilities section also render legal advice and services regarding insurance coverage, airport rules and regulations, bid contracts, airport disciplinary problems and day-to-day legal advice.

#### HETCH HETCHY PROJECT

##### Litigated Matters

Two eminent domain cases relating to the Hetch Hetchy Division were settled by negotiation.

One claim was filed and reviewed by this office and a recommendation for payment or denial made.

##### Nonlitigated Matters

Varied Hetch Hetchy operational matters required the review and legal assistance of this office.

For example, advice was given concerning remedies for nonperformance by a contractor. Letters were prepared relative to the legality of annexing a stretch of the aqueduct right-of-way to the City of Modesto, a subordination agreement with the U. S. Forest Service was approved for use regarding a





road, the right to the use of which rests with the City. Also, pursuant to application for a federal grant under the Urban Mass Transportation Act of 1964, as amended, in connection with the \$30,000,000 Power Improvement Program for the Municipal Railway, the Department of Transportation approved a grant of \$19,766,666. The Grant Agreement, executed on April 23, 1973, was reviewed and certified by this office as being duly authorized by the Board of Supervisors on August 13, 1972, and in all respects in compliance with State and local law.

This office also assigned a Deputy City Attorney to review and report from Sacramento on all pending legislation affecting the management and operations of the City's Public Utilities, including Hetch Hetchy.

#### Antitrust Litigation

[A discussion of the work performed by this office section in antitrust cases in which Hetch Hetchy and other departments of the Public Utilities Commission, as well as the Airports Commission, have an interest, follows.]

#### Acoustical Tile

Extended conferences, correspondence and pleadings negotiating and approving settlement of acoustical tile cases with Owens-Corning Company.

#### Auto Fleet Discounts

Investigations, review of file and conferences with State Attorney General's office regarding State prosecution and possible legal actions by City regarding fixing of automobile fleet discount prices.

#### Brass and Copper Tubings

Final payments on prior settlements approved and reports on final distribution of payments prepared for Public Utilities Commission.

#### Cast Iron Pipe

Legal proceedings involving the subpoena of Water Department records by the U. S. Government, interrogatories and exhibits were undertaken. Partial settlements were also negotiated during the fiscal year period.

#### General Motors Corp. Bus Monopoly

Extensive legal work was performed with regard to monopoly



issues, to City's position, damages, costs and a possible joinder in class action litigation.

#### Gypsum Wall Board

Investigation of City purchases and contracts and reviews of present litigation and class action activities by State of California and others was undertaken.

#### Master Key System

Investigation of purchases by City Departments, review of potential participation in class actions or other litigations to recover damages was made.

#### Plumbing Fixtures

Continued review and filing of miscellaneous documents on pending actions was carried out.

#### Tire Leases

Extensive conferences and preparation for court appearances on possible conspiracy litigation was undertaken. Filing and review of complaints, answers and other pleadings and preparation of pretrial statements.

#### Title Insurance

Investigation was made of conspiracy charges and title report expenses incurred by City.

#### Water Meters

Research of Water Meter price lists; preparation and review of numerous pleadings; conferences and correspondence regarding expense funds and proposed settlements were carried out.

### WATER DEPARTMENT

#### Litigated Matters

Again, this past year was an active litigation period for this department. Ten new actions were reviewed and processed and five others were concluded on behalf of the Water Department. Five are presently pending.

The foregoing litigation ranges in nature from eminent domain cases to others seeking money damages, overtime compensation, civil rights of tenants and clarification of land





rights and title to land.

Furthermore, a total of 114 new claims were filed against the Water Department and reviewed by this office during the past year. Of these, 47 were compromises settled and approved by this office.

#### Nonlitigated Matters

Adoption of the new State Environmental Quality Act and of the Federal Environmental Protection Act has resulted in extension review by this office of the effect of the many regulations and the compliance required therewith.

As a result of the rising cost of construction and also of operating costs, this office had to review various cost allocation and financial studies in order to insure that departmental rate increases were legally sound.

In the wake of the decision in Freeman v. Frye, (reported last year) an ordinance has been drafted to provide a lien against the property served for unpaid water bills.

The State Water Resources Control Board permit under which city is entitled to divert water to storage behind James H. Turner Dam, and subsequently to make a beneficial use thereof, requires a certain amount of servicing each year in connection with extending the permit.

Much local history is involved in water rights, and during the course of the year an ancient lawsuit was settled between the City, as successors to the Spring Valley Water Company, and Castlewood Country Club, as successor to Phoebe Apperson Hearst, over an agreement between Spring Valley and Mrs. Hearst entered into in 1910 relative to water supplies to the Hearst Ranch (now the Castlewood Country Club). Discussions were also held during the year with the present owners of the California Nursery Company, concerning their rights to water as riparian owners along Alameda Creek, based on a contract with Spring Valley entered into in 1887, when Spring Valley began diverting water to San Francisco from Niles Dam.

This office also renders considerable legal assistance to the Water Department in the preparation of agricultural and other leases.

This past year, numerous agricultural, recreational and commercial lease agreements and land use permits involving the extensive Water Department lands were prepared and conferences with members of the Land Management Bureau of this utility were held routinely for the purpose of resolving legal problems





arising from said agreements. In addition, surety bonds, insurance policies, certificates of insurance and other legal instruments ancillary to the foregoing were reviewed and approved as to form.

### MUNICIPAL RAILWAY

[Reference should be made to Section I of this report for statistics on those litigated matters which constitute the defense of tort claims allegedly arising out of Municipal Railway operations.]

Several important Municipal Railway matters required the legal services of this office. In response to a joint call for bids by the San Francisco Municipal Railway Improvement Corporation (SFMRIC), a nonprofit corporation, and the Massachusetts Bay Transportation Authority (MBTA) for procurement of 230 Subway-surface rail cars (80 for SFMRIC to be leased to the City and 150 for MBTA) Boeing Vertol Co. submitted the low bid. A contract in the sum of \$24,015,625 for the procurement of 80 cars awarded by SFMRIC to Boeing Vertol Co. was prepared and approved by this office.

This office also reviewed and approved several contracts relating to the furnishing and installing of a subway signal system, procurement of steel rails, reconstruction of the Twin Peaks Tunnel tracks and professional services in connection with the design of the landscaping of the Junipero Serra right of way, the motor coach storage and maintenance facility and the transit car storage and maintenance facility.

To provide City's share of the funds needed to finance the \$44,000,000 Transit Improvement Program (TIP) an agreement between the City and SFMRIC, approved by this office and authorized by the Board of Supervisors, was executed. Pursuant to said agreement and a previous agreement relating to the \$51,000,000 Transit Equipment Program (TEP), SFMRIC sold \$10,000,000 of its bonds (\$6,800,000 Series A System Bonds for TIP and \$4,000,000 Series C Bonds for TEP).

Pursuant to the TIP agreement the City executed two facilities leases providing for the leasing of (1) the steel rails and (2) the subway-signal system from SFMRIC as lessor to the City as lessee. Pursuant to the TEP agreement the City executed Equipment Lease No. 3 providing for the leasing of 80 subway-surface rail cars from SFMRIC as lessor to the City as lessee. The aforesaid leases were reviewed and approved by this office.

This office also participated in contract negotiations with representatives from the Public Utilities Commission,





Lockheed Missiles and Space Co., Inc. and Urban Mass Transportation Administration in connection with a federal grant of \$1,030,000 for Demonstration of Kinetic Energy Flywheel Propulsion for Trolley Coaches.

Municipal Railway personnel problems required much attention. Research was performed and an opinion was written concerning the legality of the City making pension contributions for employees on extended leaves of absence to serve as union officers. This was followed by a lawsuit by union officers and the matter is now in litigation.

Research was done and a letter written concerning improper delegation of legislative authority to employee organizations.

An opinion was written concerning the meaning of the phrase "average of the two highest wage schedules" as used in Charter Section 8.404, relative to setting the wages of platform men, and incidentally, limiting their fringe benefits. This opinion brought about a lawsuit by the carmen's union against the City, which suit reached an outcome favorable to City.

Another lawsuit was filed to force payment of carmen's trust fund benefits to operators transferred to other jobs due to physical disabilities. This case remained in the early stages at the close of the fiscal year.

A decision on appeal was rendered upholding City's position that a public hearing is required at Step Three of the carmen's grievance procedure.

Numerous conferences were held with civil service and railway personnel regarding pay and fringe benefits for classes promotive from bus operator and platform men, for the previous fiscal year, and for bus operators and platform men for the new fiscal year (1973-74).

Disciplinary and dismissal proceedings raised many legal questions and consumed increasing amounts of the time of attorneys in this office.

Research was performed relative to the division of funds by the Metropolitan Transportation Commission among the several bay area transit operators. These funds are derived from the sales tax on gasoline imposed by the 1972 legislature.

#### GENERAL MANAGER OF PUBLIC UTILITIES

The Utilities General Counsel advises the General Manager and other officials of his staff. Furthermore, he reviews





and approves as to form all documents relative to utilities matters. This year the Utilities General Counsel reviewed and approved as to form 218 contracts, permits and other documents during the year.



#### **IV. EMPLOYEES' RETIREMENT SYSTEM**



#### IV. EMPLOYEES' RETIREMENT SYSTEM

##### RETIREMENT BOARD HEARINGS AND OTHER LEGAL MATTERS

The San Francisco City and County Employees' Retirement System is administered and managed by the Retirement Board. A Deputy City Attorney is specifically assigned by the City Attorney to act for this office as counsel for the Retirement Board and the Retirement System. This deputy devotes his full time to the varied legal problems involved in the daily operations of the Retirement System. He attended each of the weekly meetings of the Retirement Board during the past fiscal year for the purpose of advising the Board on legal matters.

During the year, the Retirement Board heard approximately 121 cases in which applicants sought disability and death benefits because of industrial injuries. The deputy assigned to the Retirement Board prepared for and participated in each of these cases, cross-examining applicants and witnesses, producing and examining witnesses, so that there would be a full presentation of all pertinent facts to the Board.

The deputy assigned to the Retirement Board also supervises other attorneys in this office who are designated to represent the City and County and the Retirement Board in matters before the State Workmen's Compensation Appeals Board.

##### COURT LITIGATION

This office represents the Retirement System and the Retirement Board both in the courts and before the Workmen's Compensation Appeals Board. Most of the litigation involving the Retirement System and the Retirement Board concerns the determination by the court as to who is entitled to benefits under the Retirement System, the extent of such benefits, or whether benefits have been improperly denied an employee or his beneficiary. Three cases of this type were concluded during the year and 15 are pending.

More and more frequently, this office is called upon to represent the Retirement System in domestic relations litigation involving employees of the City and County who are members of the Retirement System and therefore have funds in the Retirement System. Although it is usually not necessary to prepare pleadings or appear in court in such cases, an ever-increasing amount of time and effort is spent conferring with attorneys representing the parties and assisting them with the legal problems relating to their rights to the funds in the Retirement System and in the benefits payable under the Retirement System.





**STATE WORKMEN'S COMPENSATION APPEALS BOARD**  
**PROCEEDINGS AND SUITS IN INTERVENTION**

The Retirement Board, pursuant to Section 8.515 of the Charter, administers the benefit provisions of the Workmen's Compensation laws of the State of California for industrial injuries and deaths sustained by employees of the City and County, the Unified School District and the Community College District. This office appears on behalf of the Retirement System in hearings before the Workmen's Compensation Appeals Board of the State of California in connection with all contested claims for workmen's compensation benefits: against the City and County, the Unified School District and the Community College District. Hearings are held by the Appeals Board in those cases in which the Retirement System denies liability for the alleged industrial injury or death, or denies that an injury occurred, or in which the Retirement System contests that the claimed disability resulted from the injury, or in which the Retirement System questions the extent of the claimed disability.

During the past year, 568 applications for workmen's compensation benefits were filed or pending before the Appeals Board. As a result, this office prepared for and participated in 686 hearings before the Appeals Board. The hearings involved applications for benefits filed by employees of the following departments or agencies: Adult Probation, Airport, Controller, Coroner, Electricity, Fire, Hetch Hetchy, Juvenile Court, Municipal Court, Municipal Railway, Police, Public Health, Public Works, Purchasing, Real Estate, Recreation and Park, Registrar of Voters, Sheriff, Social Services, Water, Weights and Measures, and Unified School District.

The City Attorney also represents the City and the Retirement System with respect to the City's right of subrogation against third parties who negligently cause injury to City employees, whereby reimbursement is obtained for the amount of compensation paid and medical costs incurred by the City for the benefit of such employees as a result of their injuries. Where a City employee is injured in the course of his employment by a third party and thereafter commences an action in his own behalf against that third party, the City has the right to intervene in that action in order to recover the amount of the benefits paid to or on behalf of the City employee. During the past year, this office concluded five suits in intervention, resulting in the recovery of a total sum of \$25,966.99. On occasion the City seeks recovery of such expenditures by way of cross-complaint in those actions in which the City is already a party. During the past year, three cases involving such cross-complaints were closed, resulting in the recovery of a total sum of \$6,433.69. In addition, reimbursement of a total sum of \$66,061.37 was obtained by way of settlement without litigation in 30 other subrogation matters.



## V. RATE SECTION





## V. RATE SECTION

The City Attorney's Office is charged with the responsibility of representing the City in California proceedings which affect the City and County of San Francisco and its residents.

One area of action involves the representation of the City's interests before regulatory agencies on matters which will directly affect the City and County of San Francisco and its residents. During the past year this office was actively engaged before administrative tribunals with respect to matters ultimately affecting the financial interests of the City and County of San Francisco rate payers. The scope of the proceedings involved rates, services, rules and regulations of the public utilities services serving San Francisco. Participation by a Deputy City Attorney and the Rate Engineer included attendance at hearings, and the issues involved extensive participation and research.

### FEDERAL POWER COMMISSION

Currently this office is following present dockets before the Federal Power Commission involving natural gas rates. Due to budget limitations, our appearance has been limited to written communications with the Commission regarding our position in pending matters.

Recently our office participated in the settlement conference held in San Francisco involving six major dockets: RP 69-6, RP 69-20, RP 70-11, RP 70-13, RP 72-150, and RP 72-155. Refunds totaling \$56.3 million were involved, with an additional \$31.5 million going to a reserve for exploration and development of new gas fields. In docket RP 69-6 and RP 70-11, \$6.6 million has already been refunded (Opinion No. 582). The result of the conferences held in San Francisco, and later in Washington, D. C., resulting in the stipulation and agreement as to the amounts involved in refunds and exploration reserve, is now awaiting final approval by the Federal Power Commission.

### CALIFORNIA PUBLIC UTILITIES COMMISSION

The Pacific Telephone & Telegraph Company filed for increased rates totaling \$328 million in September 1972, in Application 53587, with \$103.3 million to offset increased operating costs requested immediately in the form of an emergency rate increase. The Commission rejected the emergency rate request, and in January 1973 began hearings on the amended applications which reduced the original request of \$328 million



down to \$302 million because of increased earnings experienced by the company since its original application was filed.

At the close of this fiscal year hearings were still in progress on Application No. 53587. The two major issues in this application are the rate making treatment to be accorded accelerated depreciation and the rate of return. The company is asking for accelerated depreciation with normalization in accordance with the existing law, which does not allow companies not taking accelerated depreciation to do so unless a normalization reserve method is followed. This could add some \$56 million to the present rate structure of the company and is included in the \$302 million request. In addition, the company is seeking a rate of return of 9.5% as opposed to the 7.85% last found reasonable by the Commission in 1972.

The City and County of San Francisco has consistently recommended a flow through method of accelerated depreciation before the law was changed, and so testified in all recent rate applications of the Pacific Telephone & Telegraph Company. In October 1972, San Francisco presented evidence in testimony, in Application No. 51904 of the General Telephone Company, in which the treatment to be accorded accelerated depreciation was in issue. That issue is still before the Commission in both the General Telephone Company application and Pacific Telephone & Telegraph Application No. 53587.

As a result of San Francisco intervention and legal pursuits in Application 51774, the Supreme Court last year annulled the order of the California Commission granting the Pacific Telephone and Telegraph Co. \$143 million in increased rates plus interest accrued. To the City this meant a refund of \$215,000. Business and home owners in San Francisco received approximately \$14,000,000.

During the year the Pacific Gas & Electric Company presented a number of filings for increased gas and electric rates. In Application No. 53118, Decision 80878, the Gas Department of the company was authorized to increase rates by \$48 million annually and earn a rate of return of 8%. In application No. 53552, Decision No. 80974 authorized the company to offset increased costs from natural gas from Pacific Gas Transmission and El Paso Natural Gas Company amounting to \$12.7 million annually. In application No. 53866, Decision 81590 (amended in No. 81609) the company, in Phase I of this application, was authorized to increase its rates by \$46.8 million to offset increased costs of natural gas from the Pacific Gas Transmission Company and California Producers.

Two applications are still pending before the Commission





on which hearings have not been held to date. In application No. 54205, the company is seeking \$211,500 in increased rates for its steam customers within the City and County of San Francisco. In application No. 54127 the company is requesting an additional \$15 million to offset increased costs of natural gas from El Paso Natural Gas Company which would take effect in November 1973.

In application No. 53185 (Decisions No. 79838 and 81077) the company requested, and received, authority from the Commission to adopt a fuel costs adjustment clause for an increase in its electric rate tariffs. As a result of these decisions the company filed an advice letter increasing its electric rates \$55 million, which request was approved by the Commission in Resolution No. E-1358. Because the price the company pays for its natural gas or low-sulphur fuel oil to generate electric power in its steam generating plants is the greatest single expense associated therewith, a fuel costs adjustment provision will allow the company to just recoup any future increases in these two commodities without the necessity for a formal rate application.

#### OTHER MATTERS

This office has also assisted other City departments in matters relating to public utilities and the establishing of rates for services involving tow-away rates, taxicab rates, and water rates. In each instance, the rate expert in the City Attorney's office was called upon to review the requested rate increases and recommendations as to any changes. In the case of taxicab rates, a study was made regarding an increase to cover just the increased costs experienced from the preceding year when an increase was authorized. Independent cab companies and drivers, made objections to increases. In the past, taxicab rates have been set based upon revenue requirements of the Yellow Cab Company, since it holds over 60% of the total outstanding permits, and has been the only company in which sufficient record keeping was available to determine the actual costs of providing the service of that company.





VI. SERVICES RENDERED TO CITY DEPARTMENTS



## VI. SERVICES RENDERED TO CITY DEPARTMENTS

### CONTRACT PREPARATION AND REVIEW

During the fiscal year 224 contracts of the Department of Public Works, including the Bureau of Architects and Bureau of Engineering, were prepared and reviewed. Leases, contracts and other legal documents were prepared, reviewed and approved for various City commissions, departments and officers, including the Chief Administrative Officer, Purchaser, Real Estate Department, Recreation and Park Commission, Parking Authority, Art Commission, Mayor's Office, Juvenile Court, Department of Social Services and Planning Commission.

### LEGAL CONSULTATION AND ADVICE

In addition to 245 formal opinions, this office completed numerous requests for legal research, advice and preparation of various documents concerning legal problems which arise in connection with the day-to-day operations of the various departments of city government.

638 work assignments were completed this year. Legal problems arise which do not permit written communication between the departments and the City Attorney because time is of the essence. Where time permits or further legal research is required, however, requests for legal advice are usually handled by written memorandum to a Deputy City Attorney in the form of a work assignment. The work assignment is first worked up by the deputy assigned and, depending on its relative importance or complexity, is gone over by senior deputies. The work assignment is then presented to the City Attorney, who makes the final decision before the work leaves the office as a finished product.

While no complete statistical record can be kept of legal advice rendered on a daily basis by the City Attorney and deputies, it is certainly voluminous. The City Attorney and deputies are constantly performing a wide range of legal services for the 44 departments and offices of City and County government, for the Municipal and Superior Courts, the Parking Authority, the Housing Authority, the Redevelopment Agency, the San Francisco Unified School District and the San Francisco Community College District, as well as legal informational services for members of the public and for other public jurisdictions. Such services consist mainly of document preparation, review and approval of contracts, leases, bonds, securities, insurance policies, civil service documents, applications for federal and state grants, title policies and reports; the preparation, review and approval of all documents and matters involved in general obligation and





revenue bond issues; oral and written advice to employees, officers, departments, boards and commissions of the City and County; attendance and advice at employee disciplinary hearings conducted by City departments; attendance and advice at license and permit hearings; attendance and representation of the Probation Officer and Social Services Department at Juvenile Court proceedings; preparation and prosecution of child abandonment proceedings in Juvenile Court; representation of the Assessor's Office at equalization hearings conducted by the Assessment Appeals Board; attendance and advice at meetings of Boards and Commissions and office conferences and meetings with officers and representatives of departments.





ANNUAL REPORT OF THE CITY ATTORNEY  
CITY AND COUNTY OF SAN FRANCISCO

JULY 1, 1973 - JUNE 30, 1974

THOMAS M. O'CONNOR  
CITY ATTORNEY





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## I. LITIGATION



## I. LITIGATION

The City Attorney's office handles civil litigation involving the City and County, the San Francisco Unified School District and the Community College District.

### 1. LITIGATION CONCLUDED IN FISCAL YEAR.

1,359 actions were concluded during the 1973-74 fiscal year as follows:

Tort Actions	720
Nontort Actions	146
Abatement Actions	175
Workmen's Compensation and Subrogation Actions	294
Appellate Litigation	<u>24</u>
Total	1,359

#### Tort Litigation.

720 tort actions concluded sought damages for injuries to persons and properties and for death.

See Table 1 at the end of this chapter for summary of tort actions concluded.

See Table 2 at the end of this chapter for summary of departments, judgments paid, settlements and cases won or dismissed.

#### Nontort Litigation.

146 nontort actions concluded were writ proceedings (mandamus, prohibition, certiorari) and contract, eminent domain, tax, antitrust, and injunction actions.

See Table 3 at the end of this chapter for summary of departments involved.

#### Abatement Actions.

175 actions concluded were actions taken to abate nuisances from violations of building, health, housing and related laws and ordinances, instituted after unsuccessful efforts of the departments concerned to eliminate the nuisance.





See Chapter VI of this report for details.

Workmen's Compensation and Subrogation Proceedings.

Proceedings before the Workmen's Compensation Appeals Board concern applications filed by employees of City, the School District and the Community College District for injuries or death incurred within the scope of employment. This office attended 771 hearings relating to 554 applications. 14 subrogation suits were concluded.

See Chapter IV of this report for details.



## Appellate Litigation

The 24 appellate cases concluded are:

1. Bechtel Corp. v. San Francisco, Court of Appeal 1 Civil 31781 (nonpublication). Reversed judgment annulling penalties in action for refund of solvent credits taxes.

2. Berkelman v. S.F.U.S.D., United States Court of Appeals, Ninth Circuit, 73-1686. In this case the Ninth Circuit upheld the admissions policy of Lowell High School insofar as they qualified candidates on the basis of prior academic achievements even though certain identifiable minorities were underrepresented. However, the court invalidated that aspect of the Lowell admissions policy designed to achieve sexual balance which imposed a higher entry grade point average on women than on men.

3. Burtleson v. City and County of San Francisco, Court of Appeal 1 Civil 31261 (nonpublication). Reversed judgment for \$82,208 for breach of warranty on construction contract and directing trial court to enter judgment for \$1,763. Hearing denied.

4. Cadena v. Perasso, 498 F.2d 383, decided May 28, 1974, affirmed judgment that a judicial officer is immune from liability for damages and reaffirmed the principle that a federal court of equity is reluctant to interfere with state criminal proceedings.

5. Carrillo v. San Francisco, 1 Civil 31310, Court of Appeal (nonpublication). Affirmed \$50,000 judgment in dangerous condition death case.

6. Chu v. Langley Porter, United States Court of Appeals, Ninth Circuit, No. 73-1460 (not for publication), affirmed the judgment of the District Court that plaintiffs alleged civil rights complaint against various medical institutions was completely without merit.

7. Cryssels v. City and County of San Francisco, BARTD, Court of Appeal 1 Civil 32091 (nonpublication), affirmed denial of petition for relief from late claim statute.

8. Curreri v. San Francisco, Court of Appeal 1 Civil 30800 (nonpublication). Affirmed \$500,000 judgment in dangerous condition amputation case.

9. Duskin v. Alioto, Court of Appeal 1 Civil 31847 (nonpublication). Affirmed order denying preliminary injunction in







taxpayer's action to prevent further work and payments under architect's contract.

10. Ector v. City of Torrance, 109 Cal.Rptr. 849. The California Supreme Court reversed the Court of Appeal and held valid the City of Torrance residency requirement for city employees. In this case the City and County filed a brief, appeared and argued as amicus curiae in favor of validity of residence requirement.

11. Fleming v. City and County of San Francisco, et al., Court of Appeal No. 1 Civil 31325 (not for publication). After a defense jury verdict in favor of the City and County, the plaintiff appealed, alleging error by the court refusing to give to the jury certain instructions and erroneous instructions given to the jury. The verdict was affirmed by the Court of Appeal and a hearing was denied by the Supreme Court.

12. Golden Gate Bridge and Highway Transportation District v. City and County of San Francisco, Court of Appeal No. 22678. Original mandate proceeding filed in the Supreme Court of the state and transferred to the Court of Appeal. In this proceeding the Bridge District sought a judicial declaration invalidating the City policy pursuant to which the Board of Supervisors directed the San Francisco delegation to the Board of Directors of the Golden Gate Bridge District as to votes on important matters coming before the Bridge District. Hearing was denied.

13. Gonzales v. Mailliard et al., United States District Court No. 50424. Plaintiffs alleged that Section 601 of the Welfare and Institutions Code is unconstitutional in that it violates the equal protection and due process clauses of the Fourteenth Amendment. Declaratory judgment and injunction entered by three-judge district court reversed and remanded by U.S. Supreme Court for further proceedings to determine the existence of a case or controversy.

14. Johnson v. S.F.U.S.D., United States Court of Appeals, Ninth Circuit, No. 71-1877, decided June 21, 1974, vacated the District Court decision regarding elementary school integration in San Francisco and sent the entire case back to the District Court for further consideration.

15. Kline v. City and County of San Francisco, Court of Appeal No. 1 Civil 33228 (nonpublication), jury trial. Affirmed denial of motion for new trial for refusal of instruction on imminent peril.

16. Lamberth, In re, Court of Appeal No. 1 Civil 31785 (nonpublication). The Court of Appeal reversed the trial





court's decision denying an adoption petition on the basis that there was no evidence to support said decision.

17. Lau v. Nichols, 94 S.Ct. 736 (United States Supreme Court), reversed the judgment of the United States Court of Appeals and held that San Francisco School District's failure to establish a language instruction program for non-English speaking Chinese students was violative of the 1964 Civil Rights Act.

18. Magee v. Superior Court of City and County of San Francisco, 8 C.3d 949. Petition for writ of prohibition was filed in the Court of Appeal challenging the order of Superior Court Judge denying the application of Ramsey Clark to associate as a special counsel to the defendant Ruchell Magee. The Court of Appeal granted the petition and reversed the order of Superior Court Judge.

19. Phillips v. City and County of San Francisco, 491 F.2d 951, affirmed judgment that public employer can reasonably regulate public employee's right of free speech on public premises and during work hours.

20. Rollins, et al. v. City and County of San Francisco, et al., 37 C.A.3d 145, treated plaintiffs' motion to augment as a petition for a writ of error coram nobis and thereupon reversed judgment and remanded to trial court with instructions to reconsider plaintiffs' motion for a new trial in the light of newly discovered material evidence.

21. S.P.U.R. v. Central Permit Bureau, 30 C.A.3d 920. Court of Appeal upheld a permit issued to Holiday Inn and concluded that the permit was not issued in violation of the interim controls set into operation by the adoption of the resolution regarding reclassification by the Planning Commission.

22. San Francisco Street Artists Guild, et al. v. Donald Scott, 37 C.A.3d 667. The Court of Appeal affirmed decision of Superior Court which held that San Francisco's laws regulating street artists and peddlers were constitutional. Hearing before the Supreme Court denied.

23. Vernali v. City and County of San Francisco, Court of Appeal No. 1 Civil 31749 (nonpublication). Reversed judgment denying petition for writ of mandate where the Civil Service Commission refused to correct an error in key answer that had been timely protested and where legal action was not filed until after the examination was scored and the tentative eligible list was posted.

24. Young Socialists for Jenners & Pulley, et al. v. Brady, et al., United States Court of Appeals No. 73-1263 (not for publication), affirmed judgment for Community College defendants upholding discipline of students who disobeyed dean.



## 2. CLAIMS.

4,722 claims were filed during the fiscal year. Filing of a claim is a prerequisite to institution of a suit. This office handles investigation, review, evaluation and disposition of claims.

See Table 4 at the end of this chapter for summary of claims filed during the fiscal year by department.

## 3. LITIGATION PENDING AT END OF FISCAL YEAR.

1,055 actions were filed during the fiscal year.

See Table 5 at the end of this chapter for summary of actions filed during the fiscal year.

3,379 actions were open and pending at the close of the fiscal year.

See Table 6 at the end of this chapter for summary of open and pending cases on June 30, 1974.





TABLE I

SUMMARY OF 720 TORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Cases</u>	<u>Judgments Paid</u>	<u>Litigated Settlements</u>	<u>Won or Dismissed</u>
Airport	2	-	-	2
Civil Service	3	-	2	1
Electricity	1	-	-	1
Fire	4	-	3	1
Juvenile Court	1	-	1	-
Municipal Court	1	-	-	1
Municipal Railway	471	43	351	77
Police	68	4	30	34
Public Health	14	2	9	3
Public Works	103	3	76	24
Recreation & Park	12	-	11	1
Retirement	6	5	1	-
Sheriff	2	-	-	2
Unified School District	14	1	9	4
Water	<u>18</u>	<u>-</u>	<u>14</u>	<u>4</u>
Total	720	58	507	155

# TABLE I

Summary of 1930-1931  
Cotton Production in the United States

State	Area in acres	Yield per acre	Total Production in bales
Alabama	1,200,000	1.5	1,800,000
Arkansas	1,000,000	1.5	1,500,000
California	1,000,000	1.5	1,500,000
Florida	1,000,000	1.5	1,500,000
Georgia	1,000,000	1.5	1,500,000
Illinois	1,000,000	1.5	1,500,000
Indiana	1,000,000	1.5	1,500,000
Iowa	1,000,000	1.5	1,500,000
Kansas	1,000,000	1.5	1,500,000
Mississippi	1,000,000	1.5	1,500,000
Minnesota	1,000,000	1.5	1,500,000
Montana	1,000,000	1.5	1,500,000
Nebraska	1,000,000	1.5	1,500,000
Nevada	1,000,000	1.5	1,500,000
New Mexico	1,000,000	1.5	1,500,000
North Carolina	1,000,000	1.5	1,500,000
Ohio	1,000,000	1.5	1,500,000
Oklahoma	1,000,000	1.5	1,500,000
Oregon	1,000,000	1.5	1,500,000
South Carolina	1,000,000	1.5	1,500,000
South Dakota	1,000,000	1.5	1,500,000
Tennessee	1,000,000	1.5	1,500,000
Texas	1,000,000	1.5	1,500,000
Utah	1,000,000	1.5	1,500,000
Vermont	1,000,000	1.5	1,500,000
Virginia	1,000,000	1.5	1,500,000
Washington	1,000,000	1.5	1,500,000
West Virginia	1,000,000	1.5	1,500,000
Wisconsin	1,000,000	1.5	1,500,000
Wyoming	1,000,000	1.5	1,500,000
Total	1,000,000	1.5	1,500,000

TABLE 2

TORT ACTIONS CONCLUDED--  
DEPARTMENTS--AMOUNTS PAID

<u>Departments</u>	<u>No. of Cases</u>		<u>Prayers</u>	<u>Amount Paid</u>
Airport	2	\$	100,000	\$ -
Civil Service	3		121,860	2,750
Electricity	1		20,125	-
Fire	4		962,500	67,500
Juvenile Court	1		76,140	1,750
Municipal Court	1		5,000	-
Municipal Railway	471		29,683,375	2,760,385
Police	68		14,536,075	70,050
Public Health	14		4,863,040	110,000
Public Works	103		12,131,155	1,476,050
Recreation & Park	12		746,490	123,525
Retirement System	6		44,130	9,130
Sheriff	2		1,550,000	-
Unified School District	14		1,253,390	31,760
Water	<u>18</u>		<u>520,230</u>	<u>26,505</u>
Total	720		\$66,618,510	\$4,679,405





TABLE 3

SUMMARY OF 146 NONTORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Actions</u>
Airport	6
Assessor	13
Board of Permit Appeals	7
Board of Supervisors	2
Civil Service	9
Controller	4
District Attorney	2
Fire	1
Hetch Hetchy	5
Juvenile Court	1
Municipal Court	6
Municipal Railway	2
Planning	5
Police	14
Public Health	5
Public Utilities	1
Public Works	13
Real Estate	3
Recreation and Park	4
Registrar	4
Retirement	3
Sheriff	1
Social Services	4
Superior Court	5
Tax Collector	5
Unified School District	2
Water	19
	<hr/>
Total	146



TABLE 4

SUMMARY OF CLAIMS FILED DURING FISCAL YEARDepartments Under Public Utilities Commission

Municipal Railway	2,848	
Water	<u>125</u>	2,973

Airports Commission

Airport	60	60
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All Other Departments

Adult Probation	1	
Agriculture	1	
Board of Supervisors	2	
Bureau of Light, Heat & Power	5	
Chief Administrative Officer	1	
City Attorney	2	
City Planning	1	
Civil Service	4	
Community College	1	
Controller	4	
County Clerk	1	
Courts	10	
District Attorney	1	
Electricity	18	
Fire	63	
Health	118	
Hetch Hetchy	6	
Housing	9	
Library	6	
Mayor	1	
Parking Authority	1	
Police	673	
Port Authority	19	
Public Defender	1	
Public Works	502	
Real Estate	4	
Recreation and Park	111	
Redevelopment	18	
Registrar	3	
Retirement	1	
Sheriff	40	
Social Services	13	
SPCA	1	
Tax Collector	4	
Treasurer	1	
Unified School District	39	
Veterans Building	1	
Youth Guidance Center	<u>2</u>	<u>1,689</u>
Total		4,722



TABLE 5

SUMMARY OF ACTIONS FILED  
DURING FISCAL YEAR

<u>Department</u>	<u>No. of Actions</u>
Airport	11
Art Museum	1
Assessor	5
Board of Permit Appeals	8
Board of Supervisors	3
Chief Administrative Officer	2
Civil Service	14
Community College District	1
Controller	2
County Clerk	1
Courts	9
District Attorney	1
Electricity	3
Fire	9
Health	26
Health Service System	1
Hetch Hetchy	3
Mayor	1
Model Cities Agency	1
Municipal Railway	367
Parking Authority	1
Planning Commission	5
Police	120
Port Authority	9
Public Works	156
Public Works: Abatement Cases	185
Real Estate	6
Recreation and Park	21
Redevelopment Agency	3
Registrar	4
Retirement Board	4
Sheriff	10
Social Services	4
Tax Collector	3
Unified School District	46
Water	7
Youth Guidance Center	1
Zoning Commission	1
Total	1,055





TABLE 6

SUMMARY OF OPEN AND PENDING CASES ON JUNE 30, 1974

<u>Department</u>	<u>Total Cases</u>
Agriculture . . . . .	1
Airport . . . . .	88
Art Commission . . . . .	2
Assessor . . . . .	76
Board of Permit Appeals . . . . .	41
Board of Supervisors . . . . .	13
Chief Administrative Officer . . . . .	3
Civil Service . . . . .	45
Community College District . . . . .	3
Controller . . . . .	14
County Clerk . . . . .	4
County Recorder . . . . .	1
Courts . . . . .	17
District Attorney . . . . .	1
Economic Opportunity Council . . . . .	1
Electricity . . . . .	10
Fine Arts Museums . . . . .	1
Fire . . . . .	15
Hetch Hetchy . . . . .	15
Housing Authority . . . . .	6
Library . . . . .	2
Legion of Honor . . . . .	1
Mayor . . . . .	4
Model Cities Agency . . . . .	3
Municipal Railway . . . . .	1,038
Museum of Art . . . . .	1
Opera House . . . . .	3
Parking Authority . . . . .	5
Planning Commission . . . . .	29
Police . . . . .	314
Port Commission . . . . .	8
Public Health . . . . .	94
Public Works . . . . .	401
Public Works: Abatement Cases . . . . .	682
Purchaser . . . . .	3
Real Estate . . . . .	20
Recreation and Park . . . . .	55
Redevelopment Agency . . . . .	11
Registrar . . . . .	6
Retirement Board . . . . .	22
Sheriff . . . . .	20
Social Services . . . . .	51
Tax Collector . . . . .	40
Unified School District . . . . .	136
War Memorial . . . . .	3
Water . . . . .	67
Youth Guidance Center . . . . .	1
Zoning Administrator . . . . .	2
<b>TOTAL . . . . .</b>	<b><u>3,379</u></b>



## II. LEGISLATIVE SECTION





## II. LEGISLATIVE SECTION

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

During the past year, this office performed legal work in connection with the preparation, analysis, review or approval of 570 ordinances and 931 resolutions which were enacted or adopted by the Board of Supervisors during the year and performed similar work in connection with 104 proposed Charter amendments or amendments thereof, and 3 bond issues which were considered by the Board of Supervisors during this period.

There were 68 formal written opinions rendered and a number of letters of advice sent to the Board of Supervisors during this same period. In addition, at least one deputy from this office was present at each meeting of the Board or of its various committees to give legal advice and assistance with respect to the many problems that arise during the course of such meetings.

Illustrative of the diverse types of legislation which were prepared and approved by this office during the past year are:

Ordinances creating a lien for unpaid charges imposed on water, sewer or industrial waste services.

An ordinance establishing a residential rehabilitation loan program.

An employer-employee relations ordinance for employees of the City and County.

An ordinance prohibiting discrimination in employment because of age.

A community antenna television franchise ordinance.

An ordinance providing for the abatement of abandoned vehicles on private property.

An ordinance regulating temporary heliports.

An ordinance regulating nude encounter studios.

An ordinance providing for the establishment of exclusive transit lanes on public streets.



An ordinance establishing interim zoning controls in residential districts.

Extensive amendments to the Environmental Impact Report ordinance.

#### CALIFORNIA STATE LEGISLATURE

San Francisco contracts with an independent legislative advocate to represent its interests before the Legislature in Sacramento.

Two deputies are assigned to assist in this task, along with other work, and either or both are in Sacramento two to four days a week, as needed, while the Legislature is in session.

The two deputies review all bills, resolutions, proposed constitutional amendments, and all amendments thereto introduced in the Legislature. The purpose of this review is to determine if there would be any effect on any aspect of city government if the bill should become law. If the bill would apparently relate in some way to operations of the City, a copy is sent to the department head or heads concerned for their review and so they can make a policy recommendation of "support," "oppose" or "no action."

The policy recommendation is then sent to the State Legislation Committee (see Admin. Code §5.5 et seq.), which meets weekly during the legislative session. At its meetings the bills and policy recommendations are discussed and appropriate policy is formulated, subject to review by the Board of Supervisors. The City Attorney is a voting member of this committee. The policies so formulated are forwarded to Sacramento to guide the legislative advocate in his work.

The two deputy city attorneys in Sacramento attend legislative committee meetings considering the matters upon which City policy has been formulated and express City's support or opposition with appropriate reasons, to the committees. They also call on authors of bills, prepare amendments, and consult with individual legislators and their staff people as to City policy on the various bills.

The 1974 legislative session completed the first biennial session under the 1972 constitutional amendment providing for two-year legislative sessions. Bills that achieved final passage during the 1974 session, and which were not vetoed, will become law on January 1, 1975.





During the 1974 session there were introduced in the Legislature a total of 3,228 bills, constitutional amendments, and resolutions. All of these, together with hundreds of amended versions were reviewed by deputies from this office, and 647 were sent to various City departments.

The City took a position of "support," "oppose" or "watch" on 342 of these measures.

In addition to the work in Sacramento, other deputies assisted department heads in analyzing many bills sent to department heads for review.

Bills affecting San Francisco's interests included S.B. 1495 (Marks and Moscone), expanding coverage of the Marks-Foran Residential Rehabilitation Act of 1973, relating to residential rehabilitation programs; S.B. 1512 (Carpenter), authorizing airport security officers to become peace officers; S.B. 1722 (Marks), extending maximum repayment period for residential rehabilitation loans; S.B. 2232 (Moscone), relating to notices of vehicle code violation where such violation is a factor in the occurrence of an accident; S.B. 2233 (Moscone), which allows the coroner to determine extent of inquiry into deaths occurring under natural circumstances; S.B. 1552 (Marks), which precludes State Department of Health from requiring disclosure of patients or records as a prerequisite for approval of a methadone program; S.B. 147 (Marks), prohibiting widening of Doyle Drive without specific approval of San Francisco Board of Supervisors; S.B. 1652 (Roberti), increasing business inventory property tax exemption and revising method of computing subventions to local government to compensate for property tax revenue loss; A.B. 2299 (Burton), which would give the San Francisco Port certain sand and gravel revenues from certain underwater removal sites; A.B. 3587 (Foran), which revises commission schedule for local administration of inheritance tax law; A.B. 2040 (Knox), which would create Bay Area Regional Planning Agency; A.B. 3694 (Foran), which would create San Francisco Bay Area Transportation Terminal Authority.

Many other bills of interest to the City were considered and those of major interest concerned "no fault" automobile liability insurance, bills relating to conforming state welfare laws and federal requirements, bills relating to public employee labor problems, and various bills relating to environmental controls.

Thus, in a major way, this office participated in implementing City policies with respect to legislation.





### III. PUBLIC UTILITIES SECTION



### III. PUBLIC UTILITIES SECTION

The Public Utilities Section of the City Attorney's office is composed of a group of deputies who are assigned to do the utilities legal work under supervision of the Utilities General Counsel. These attorneys perform all of the legal services required at all times by the Airports Commission, the Public Utilities Commission, their staffs, and the various operating departments under their respective jurisdictions. These departments include the San Francisco International Airport, which is under the jurisdiction of the Airports Commission, and the Municipal Railway, Hetch Hetchy Division and Water Department, which come under the jurisdiction of the Public Utilities Commission.

The work done by these attorneys specializing in utility matters generally includes the handling of court litigation; the drafting, review and approval of legal instruments; the investigation and settlement of claims; the preparation of written legal opinions and consultation and legal advisory services upon request of the two commissions, their officers and staff.

Examination of the legal services performed for each utility department follows:

#### SAN FRANCISCO INTERNATIONAL AIRPORT

##### Litigated Matters

During the past year, several lawsuits related to airport operations were settled or defended successfully.

Eleven (11) new lawsuits involving airport operations were filed against the City during the fiscal year. Ten (10) actions involving personal injuries seeking damages totalling \$1,640,000 were referred to the airport's insurance carrier for defense in conjunction with this office.

The eleventh action sought a writ of mandamus to set aside the actions of the Airports Commission and Board of Supervisors in adopting the Environmental Impact Report for and approving the \$390,000,000 Airport Expansion Program. This action is presently under submission by the court.

In a pending declaratory relief action seeking to declare invalid certain actions by the Airports Commission and Board of Supervisors in connection with the Airport Expansion Program, the Superior Court granted City's motion for partial summary







judgment as to two causes of action and sustained City's demurrer as to two other causes of action. City's demurrers thereto are now under submission by the Superior Court.

Six actions seeking damages totaling \$13,000,000 for damages suffered in a single airplane accident were compromised and settled by codefendant without cost or contribution by the City. One action for breach of a construction contract seeking damages of \$33,669 was compromised and settled for \$28,000. Two actions seeking \$500,000 damages for personal injury and wrongful death were compromised and settled by City's insurance carrier by payment of \$10,000 without cost to or contribution by the City. Two actions, one seeking \$9,432 damages for breach of a construction contract and the other seeking \$50,000 damages for personal injury were dismissed, and two actions, each seeking \$50,000 damages for personal injury, resulted in defense verdicts. Trial preparation continued in the quiet title action brought by the State Lands Commission to quiet state title to submerged bay lands adjoining, and claimed by San Francisco to be a part of, San Francisco International Airport.

In addition to the foregoing, the airport's right to control commercial activities on airport property was sustained by the courts in a series of court actions brought by this office section.

In connection with the filing of future actions, 62 claims for damages allegedly arising due to airport operations were filed against the City and after review, they were recommended for settlement or outright denial.

#### Civil Aeronautics Board Proceedings

This office also participated in two Civil Aeronautics Board proceedings in support of the Airports Commission air service policies.

#### Reopened Service to Omaha and Des Moines Case

This case seeks to provide additional west coast service to the Omaha/Des Moines area. Environmental information documents were prepared and submitted on behalf of the City and County of San Francisco.

#### Transatlantic Route Proceeding

This important proceeding seeks to provide additional transatlantic passenger, cargo and mail services to the major cities of Europe, the Near East, the Middle East and to Africa.



Appearance was made on behalf of the City at the Preliminary Hearing conference held on November 29, 1973, in Washington, D.C. Environmental information documents and exhibits were also prepared and submitted on behalf of the City and County of San Francisco. The City also participated in Field Hearings held last June 5-7, 1974, in Phoenix, Arizona.

### Nonlitigated Matters

Considerable legal work is involved in the administration and operation of San Francisco International Airport, the world's sixth busiest commercial airport.

A major area in which this office assists in the operation of the airport is in the negotiation, preparation and review of leases, permits, concession agreements and other contracts. For example, this past year, this office section prepared 6 major lease agreements, 7 subleases, 3 permits, 4 concession contracts, 2 right-of-way agreements and numerous lease and contractual modifications, extensions, assignments and terminations.

Furthermore, this office section engaged in numerous legal conferences related to the foregoing contractual agreements, as well as to bid contract matters, sound abatement, environmental impact problems, the airport's continuing expansion program, airport policing rules and regulations and miscellaneous matters.

This office also performed day-by-day legal work consisting of attendance at regular airport staff meetings, the rendition of both verbal and written legal opinions, the routine examination of temporary permits, and approval of insurance and bonding documents and other legal instruments auxiliary to the various leases, permits and other contracts.

Because of the taxicab and limousine activities at the airport by unauthorized operators, this office worked very closely with the airport's operations and security staffs, the State's Public Utilities Commission and the City's State legislative advocate, in order to obtain and enforce both State and local laws controlling these activities.

Advice and assistance was also rendered with respect to the preparation and conduct of disciplinary hearings held by the Airports Director in his capacity as appointing officer under Charter Section 8.341.





## HETCH HETCHY DIVISION

Three claims filed against the Hetch Hetchy Division were forwarded to this office for review. As a result, one of the claims, for \$5,220 for alleged breach of a construction contract, was approved for settlement for \$4,505.

One court action for \$6,686 for property damage, is being defended.

The 1973 Grand Jury report, criticizing the manner in which this department markets its electrical power generation, and particularly its contractual relationships with the Pacific Gas & Electric Company, precipitated considerable legal activity for this department. Specifically, an opinion was drafted in response to a request from the Board of Supervisors relating to the legality of the power marketing system used by City, in terms of the Raker Act. The Raker Act is a 1913 federal statute granting City certain rights-of-way over federal lands and the use of other federal lands for dams, powerhouses, aqueducts, and electrical transmission lines, in order that City can make use of its water rights on the Tuolumne River and its tributaries in Yosemite National Park and Stanislaus National Forest. The Raker Act grants are subject to many conditions, but the questions provoked by the Grand Jury report center around construction of Section 6, which has been construed in previous litigation to mean that San Francisco cannot sell Hetch Hetchy power generation to private persons or entities for resale.

In cooperation with Hetch Hetchy staff this office assisted in the preparation of the required response to the Grand Jury report.

In addition two lawsuits were filed, based on the Grand Jury report, each charging that City was illegally marketing Hetch Hetchy power generation and seeking to compel, among other things, that San Francisco acquire the Pacific Gas & Electric distribution system and itself distribute power at retail in San Francisco.

One of the cases was filed in federal court, and the other in state court. City, by appropriate procedures, has had the state court case moved to the federal court, where they can be processed more efficiently, as they raise substantially the same issues. This office is of the opinion that the present methods of marketing power are in compliance with the Raker Act, and a vigorous defense to each action is being put forth.

Other matters in which the department was assisted during the year included three eminent domain cases; various contract review and approvals; correspondence attempting to negotiate





settlement of two long-standing disputes concerning spring and well damage alleged to be due to driving of the Foothill Tunnel Aqueduct in Tuolumne County; and conferences and research re responsibilities of maintaining salmon spawning gravels below Don Pedro Dam.

### Antitrust Litigation

A specific discussion of several antitrust cases handled for the Hetch Hetchy Division as well as involving other utilities departments follows:

### Acoustical Tile

This office engaged in conferences and the review of documents regarding a State of California class action. Also, San Francisco Unified School District purchases were reviewed for purposes of possible settlement. Correspondence pertaining to verification of a claim for damages was carried out during the year.

### Ampicillin

Discovery is still being worked on by the plaintiffs' steering committee which is located in Washington, D.C. At the present time plaintiffs' efforts are being directed toward obtaining documents which the defendants claim are privileged under various legal doctrines.

### Asphalt

The City and County of San Francisco in 1969 sued five major oil companies for alleged price fixing related to asphalt products. Discovery has been taking place since early 1972 and this matter is set for trial in March 1975. To this date the City and County of San Francisco has settled with the Douglas Oil Company for \$42,159 and is presently in the process of settling with the defendant, Atlantic Richfield Oil Company for \$9,718.

### Auto Fleet Discounts

The complaint of the Attorney General of California was reviewed and conferences were held regarding same. A survey was conducted of purchases and increased costs of vehicles since the conspiracy was entered into.





### Bethlehem Steel

Office conferences with respect to re-enforced concrete steel bars purchases were held.

### Cast Iron Pipe

Discovery pertaining to purchases and construction costs continued during the year. Preparation of an affidavit regarding the value of pipe for indirect purchases was prepared. Interrogatories pertaining to a partial settlement were reviewed and a settlement check forwarded to the Public Utilities Commission. A class action questionnaire was prepared. Documents ordered by the court were prepared and delivered following conferences relating to the documents. Supplemental interrogatories to include parts purchases were drafted.

### Copper Tubing

Various conferences were held and files reviewed regarding closeout of the account with the Water Department. An investigation, conferences and correspondence regarding execution of a revised contract to release a \$2,500 fee appropriated by Water Department and not expended were carried out.

### Electrical Cases

Conferences regarding copies of electrical agreement and settlement agreement held with departmental officers.

### GMC Bus Manufacturer

Research and conferences regarding feasibility of filing an action undertaken. Correspondence pertaining to possible litigation carried out.

### Gypsum

Preparation undertaken for discovery pertaining to construction costs for purpose of possible damages to City. Class action questionnaire regarding damages and settlement prepared.

### Master Key System

Preparations for discovery of construction costs for purpose of possible damages to City and feasibility of filing an action undertaken.





### Oil Credit Cards

Investigation regarding possible legal class action carried out.

### Plumbing Fixtures

Files reviewed, conferences held and preparations were made regarding class action settlement.

### Portable Classrooms

File reviewed regarding status of matter and possible action.

### Refrigerants

Class action questionnaire regarding settlement prepared.

### Tetracycline--Broad Spectrum Antibiotics

The California plaintiffs, represented by the Attorney General, and the City and County of San Francisco, represented by this office, in June 1974 executed a settlement with the defendants in this case. The City and County of San Francisco is to receive \$378,000 in settlement of their action against the defendants, Charles Pfizer, Bristol-Myers, Upjohn Company, et al. Distribution will not be made until the court resolves claims for additional attorneys fees.

### Tires

Preliminary preparation and conferences for court hearings on class action question and trial procedures carried out. Preparation and arrangements made for meeting with plaintiff attorneys in Philadelphia regarding trial tactics, objections to defendants' interrogatories, class action issue, review of Federal Trade Commission documents and pertinent information to prove conspiracy, and retaining of economist expert.

### Water Meters

Opposition to defendants' motions for summary judgment undertaken and briefs prepared. Court appearance made before court on motions for summary judgments and dismissals. Motions were denied. Preparation made and conferences held with



plaintiffs' attorneys to prepare for trial. Answers to interrogatories prepared. Court appearance on pretrial conference made. Preparation of exhibits for trial and conferences regarding same held. Purchase analysis prepared for Dr. John Kuhlman, economist, and conferences held on matter. Trial preparations made.

#### Western Pipe

Settlement files reviewed and letters prepared regarding settlement.

#### Westinghouse

Preparation and correspondence regarding case exhibits.

### WATER DEPARTMENT

An ordinance establishing procedures for creating liens for unpaid water bills was prepared and adopted by the Board of Supervisors. The ordinance will enable the department to collect unpaid water bills by creating a lien against the real property served.

Unpaid sewer service charges and industrial waste charges present the same collection problems and, at the same time, ordinances establishing collection procedures for these charges through the use of liens were also prepared and enacted.

The procedures in the ordinances are necessarily cumbersome, and amendments to simplify and clarify them are being drafted.

Legal review of various aspects of a water rate increase, both within San Francisco and outside, was undertaken and required research and conferences with the rate consultants.

Other tasks of a more routine nature, but which consumed substantial amounts of time were the preparation and trial of two small eminent domain cases; renewal of the water rights permit for San Antonio Dam; much correspondence concerning water service to Castlewood Country Club and payment therefor; filing suit on a large unpaid water bill; and two matters concerning customers in bankruptcy.

#### Litigated Matters

Litigation involving operations of the Water Department consisted of the following:





Five eminent domain cases in which the aggregate awards to the City totaled \$5,048,562 were concluded following court litigation.

In addition, twenty-two other litigated cases were processed. Of these, six are still pending in court, thirteen were dismissed or settled during the year and three were referred to the City's insurance carrier for defense after investigation and review by this office.

Litigation involving this department covered a wide variety of claims. In addition to the foregoing eminent domain cases eighteen involved property damage and/or personal injury, three involved contractual damages and one seeks overtime compensation on behalf of an employee class.

Furthermore, during the year, a total of 127 claims were filed against the Water Department. Fifty of these claims were reviewed and approval given to their settlement by this office.

#### Nonlitigated Matters

Numerous agricultural, recreational and commercial lease agreements and land use permits involving the extensive Water Department lands were prepared by this office and conferences with members of the Land Management Bureau of this utility were held routinely for the purpose of resolving legal problems arising from said agreements.

One such matter concerned negotiations with the holder of the Sunol Golf Course lease and with other prospective lessees relative to the renegotiation or assignment of the existing lease.

In addition, surety bonds, insurance policies, certificates of insurance and other legal instruments ancillary to the foregoing were reviewed and approved as to form.

#### MUNICIPAL RAILWAY

Many matters relating to personnel are under continuing review. During the year five separate lawsuits relating to matters arising from the carmen's trust fund, memorandum of agreement and salary ordinances were pursued. The cases involve: (1) question whether union officers on leave of absence from the Railway are entitled to City pension contributions; (2) question on appeal as to proper wage rate in 1971-72; (3) question as to propriety of City's withholding past overpayments to carmen; (4) question whether certain employees in promotive classes are





entitled to trust fund benefits and are working out of classification; and (5) question whether disability transferees are entitled to trust fund benefits.

One additional suit in federal court by an engineer claims that he was discharged in violation of his civil rights. A preliminary ruling in City's favor has been appealed to the United States Court of Appeals for the Ninth Circuit.

Each year carmen's wages and fringe benefits are set by adoption of provisions of collective bargaining agreements on other transit systems. This process gives rise to many conferences and questions from Civil Service and the Railway calling for interpretation and understanding of the proper way to apply the foreign fringe benefits to the local system.

Interpretation of Charter provisions and other applicable laws and regulations relative to employee rights in disciplinary proceedings is also a continuing function.

In addition to personnel matters, contracts and permits relating to the cable car museum concession, and with the Metropolitan Transportation Commission relative to use of funds received from federal mass transportation grants were drafted. Memoranda on extension of the No. 59 Powell-Mason cable line and on legal requirements of providing special facilities on the new Muni for handicapped people were prepared.

[Litigation handled by this office which relates to tort claims arising out of Municipal Railway operations are treated separately in the Litigation Section of this year's report.]

#### Nonlitigated Matters

Numerous Municipal Railway matters required the legal services of this office.

In connection with the Municipal Railway's \$44 million Transit Improvement Program (TIP) and Transit Equipment Program (TEP) this office reviewed and approved (1) the lease back arrangements for the Railway's Motor Coach Storage and Maintenance Facilities at 22nd and Indiana Streets, (2) the \$2-1/2 million contract for construction of said facilities, (3) several contracts relating to the Upper Ocean Avenue Coach Yard and other facilities, and (4) the arrangements for procurement and acquisition of 100 diesel coaches and 343 trolley coaches. Additionally, a federal grant contract with DOT for \$20-1/2 million to assist in acquiring 100 additional diesel coaches, 5 passenger buses, 135 trolley coaches, 20 suburban surface





transit cars and noise suppressors for 400 buses was reviewed and certified as being in compliance with all applicable state and local laws.

This office also rendered legal advice and assistance with respect to the propriety of licensing provisions in agreements for the development and purchase of bus simulators; grievance procedures involving Railway personnel; preparation and conduct of disciplinary hearings pursuant to Charter Section 8.341; and liabilities for interest and underpayment to the Railway employee's union trust fund.

This office also attended conferences, prepared the bid proposal and contract and advised on modification of a contract for tires for this department. Guidance and written legal opinions were also given on matters relating to the rights and privileges of Railway personnel as well as on various contracts and insurance matters.

#### UTILITIES GENERAL COUNSEL

All meetings of both the Airports Commission and the Public Utilities Commission are attended by the Utilities General Counsel who provides them with whatever legal assistance is required. In addition, he advises each commission's officers and staff and reviews and approves as to form all legal documents prior to their submission to the commission members. This year, the Utilities General Counsel reviewed for approval 260 contracts, permits, resolutions, ordinances and other legal documents for said commissions.





#### IV. EMPLOYEES' RETIREMENT SYSTEM



#### IV. EMPLOYEES' RETIREMENT SYSTEM

##### RETIREMENT BOARD HEARINGS AND OTHER LEGAL MATTERS

The San Francisco City and County Employees' Retirement System is administered and managed by the Retirement Board. A Deputy City Attorney is specifically assigned by the City Attorney to act for this office as counsel for the Retirement Board and the Retirement System. This deputy devotes full time to the varied legal problems involved in the daily operations of the Retirement System. He attended each of the weekly meetings of the Retirement Board during the past fiscal year for the purpose of advising the Board on legal matters.

During the year, the Retirement Board heard approximately 170 cases in which applicants sought disability and death benefits because of industrial injuries. The deputy assigned to the Retirement Board prepared for and participated in each of these cases, cross-examining applicants and witnesses, producing and examining witnesses, so that there would be a full presentation of all pertinent facts to the Board.

The deputy assigned to the Retirement Board also supervises other attorneys in this office who are designated to represent the City and County and the Retirement Board in matters before the State Workmen's Compensation Appeals Board and the courts of this State.

##### COURT LITIGATION

This office represents the Retirement System and the Retirement Board both in the courts and before the Workmen's Compensation Appeals Board. Most of the litigation involving the Retirement Board and the Retirement System concerns the determination by the court as to who is entitled to benefits under the Retirement System, the extent of such benefits, or whether benefits have been improperly denied an employee or his beneficiary. Fifteen such cases are pending.

More and more frequently, this office is called upon to represent the Retirement System in domestic relations litigation involving employees of the City and County who are members of the Retirement System and therefore have funds in the Retirement System. Although it is usually not necessary to prepare pleadings or appear in court in such cases, an increasing amount of time and effort is spent conferring with attorneys representing the parties and assisting them with the legal problems relating to their rights to the funds in the Retirement System and in the benefits payable under the Retirement System.





STATE WORKMEN'S COMPENSATION APPEALS BOARD  
PROCEEDINGS AND SUITS IN INTERVENTION

The Retirement Board, pursuant to Section 8.515 of the Charter, administers the benefit provisions of the Workmen's Compensation laws of the State of California for industrial injuries and deaths sustained by employees of the City and County, the Unified School District and the Community College District. This office appears on behalf of the Retirement System in hearings before the Workmen's Compensation Appeals Board of the State of California in connection with all contested claims for workmen's compensation benefits against the City and County, the Unified School District and the Community College District. Hearings are held by the Appeals Board in those cases in which the Retirement System denies liability for the alleged industrial injury or death, or denies that an injury occurred, or in which the Retirement System contests that the claimed disability resulted from the injury, or in which the Retirement System questions the extent of the claimed disability.

During the past year, 554 applications for workmen's compensation benefits were filed or pending before the Appeals Board. As a result, this office prepared for and participated in 771 hearings before the Appeals Board. The hearings involved applications for benefits filed by employees of the following departments or agencies: Adult Probation, Airport, Community College District, Coroner, Electricity, Fire, Hetch Hetchy, Juvenile Court, Municipal Court, Human Rights Commission, Municipal Railway, Police, Public Health, Public Library, Public Administrator, Public Works, Purchaser, Recorder, Recreation and Park, Sheriff, Social Services, Unified School District, Water, Weights and Measures and Zoo.

The City Attorney also represents the City and the Retirement System with respect to the City's right of subrogation against third parties who negligently cause injury to City employees, whereby reimbursement is obtained for the amount of compensation paid and medical costs incurred by the City for the benefit of such employees as a result of their injuries. Where a City employee is injured in the course of his employment by a third party and thereafter commences an action in his own behalf against that third party, the City has the right to intervene in that action in order to recover the amount of benefits paid to or on behalf of the City employee. During the past year, this office concluded four such suits, resulting in the recovery of a total sum of \$12,666.66. In addition, reimbursement of a total sum of \$85,872.77 was obtained by way of settlement without litigation in 49 other subrogation matters.





## V. RATE SECTION



## V. RATE SECTION

The City Attorney's office is charged with the responsibility of representing the City in legal proceedings which affect the City and County of San Francisco and its residents.

One area of action involves the representation of the City's interests before regulatory agencies on matters which will directly affect the City of San Francisco and its residents. During the past year, this office was actively engaged before administrative tribunals with respect to matters ultimately affecting the financial interests of the City of San Francisco ratepayers. The scope of the proceedings involved rates, service, rules and regulations of the public utility companies serving the City of San Francisco.

Participation by a Deputy City Attorney and the Rate Engineer included attendance at hearings and the issues involved required extensive preparation and research.

### FEDERAL POWER COMMISSION

Currently this office is continuing as in the past to follow present dockets before the Federal Power Commission involving natural gas rates by pipe line companies to public utility customers serving California. Due to budget and personnel limitations, our appearances have been limited to written communications and interventions where deemed appropriate in order to secure the necessary exhibits and testimony in cases before the Federal Power Commission that we are not able to send a representative. Recently the Federal Power Commission has taken action to increase considerably the price of natural gas at the well head. From the price established in the early 1960's the well head price has now almost doubled. The area concept of field pricing was based primarily on the cost of producing gas, and this has been replaced now by an area ceiling price considerably above the cost method. The difference is supposed to encourage more exploration and development of natural gas to help offset the critical energy shortage of this fuel.

### CALIFORNIA PUBLIC UTILITIES COMMISSION

In September of 1972 the Pacific Telephone & Telegraph Company filed for an increase in rates totaling \$328,000,000. In January of 1973 this original request was amended down to \$302,000,000. At the beginning of the current fiscal year hearings on this Application No. 53587 were in progress. The City





and County of San Francisco has consistently followed all aspects of this rate case, and the Rate Engineer has devoted a good portion of his time to the issue of accelerated depreciation. It has been the position of the City and County of San Francisco that flow through depreciation is the proper method of accounting for and paying federal income taxes. In City of San Francisco vs. California Public Utilities Commission (1971) 6 Cal.3d 119, the City was successful in its appeal to have the matter of accelerated depreciation reviewed in light of Commission's Application No. 49142, Decision No. 74917 (69 Cal. PUC 53, 63). The Courts held in favor of the plaintiff, City and County of San Francisco, which ultimately resulted in a savings of \$215,000 to the City, and approximately \$14,000,000 to business and home owners in the form of lower rates. After 68 days of hearings, the matter was finally submitted on November 1, 1973. Briefs were filed by the City and County of San Francisco along with the cities of Los Angeles and San Diego in February of 1974. The matter was under submission when on June 18, 1974, proceedings were reopened for further briefs on the issue of reserve for deferred taxes; the entire proceedings were then submitted July 3, 1974.

While the position of the City and County of San Francisco has always been one of flow through depreciation, which in effect allows only the taxes paid by a utility to the federal government in any one year as being deductible from gross revenues in light of the change in the federal laws whereby a utility that had not availed itself of accelerated depreciation under flow through method could no longer avail itself of fast tax writeoffs unless it created a reserve tax more commonly referred to as normalized depreciation, the City and County of San Francisco, along with the other two major cities in California, agree to accept normalized depreciation under the Pro Forma method. This method averaged the next three (3) years of deferred tax reserve, and used this figure in computing future rates. The reason for the Pro Forma method is simply that the reserve builds up at such a tremendous rate one year from the next over and above any increase experienced by either gross revenues or other expenses that this was a reasonable and recognized rate-making adjustment. The matter now rests with the Commission, and it is anticipated that if the Pro Forma method is not adopted, San Francisco, along with the other two major cities, Los Angeles and San Diego, will seek a writ of review by the California Supreme Court.

Two other hearings of major importance were covered during the year. One involved Case No. 9365, an investigation by the Commission into the undergrounding of transmission lines within the State of California. This matter is still pending at the close of this fiscal year. San Francisco has overhead electric transmission lines from Hetch Hetchy Power Development





down to the City of Newark. Investigation by the Commission is concerned with future transmission lines basically, and what portion of these lines should be constructed underground. While the City's own transmission lines are not directly involved, the question of costs in providing future electric service to consumers in California is of paramount importance, along with esthetic values associated with future transmission lines, overhead or underground. Twenty hearing days were held during the fiscal year, and the matter is still under review.

Another important investigation on the Commission's own motion concerns the energy and fuel adequacy in the State of California. This investigation was conducted under Case No. 9581. Electric energy is now being produced through hydro plants, which is almost fully developed in the State of California, along with natural steam--or geyser--plants, which have some future growth but represent a very small percentage of the total energy production, fossil fueled and nuclear powered plants where future additions will have to be made with the latter two types of fuel to meet future requirements. In addition, natural gas which is not only used in production of electricity through steam plants but also the major commodity in many industrial, commercial, as well as residential uses, is a diminishing natural energy source, and one which will eventually be completely depleted.

In separate action before the California Public Utilities Commission, the City and County of San Francisco, in Application No. 51910, requested an authorization from the Commission to construct a separated grade crossing at Fourth Street. Approval by the Commission was necessary, since the State Highway Department was in the process of planning the extension to the freeway, which was at that time terminated at Sixth Street. Subsequent to that filing, the Southern Pacific Company, in Application No. 53498, requested authority to relocate the Passenger Station from Third and Townsend to Fourth and Townsend. If the Commission granted approval of this Application, the necessity for a grade crossing at Fourth Street would no longer be necessary. In Decision No. 81188, the Commission approved the relocation of the Passenger Terminal Station. An appeal was made to that Decision by the Peninsula Commute and Transit Committee, and a rehearing was held. As a result of this rehearing, the City presented two witnesses; one from the Department of Public Works, and one from the Municipal Railway System, insofar as it related to traffic congestion and the rerouting of Municipal buses to serve the new station. By Decision No. 82584, Decision No. 81188 was reaffirmed. The end result was to dismiss the City's application for a separated grade crossing and approve the agreement between the City and the Southern Pacific Company in the relocation of the Passenger Terminal Building.





In Application No. 54614, dated January 31, 1974, filed by the Southern Pacific Company, increases in the commuter fares between San Francisco and Peninsular points were requested. This was predicated on the increased fuel costs for diesel fuel oil experienced by the railroad company in the conduct of its passenger operations. The City supported the staff recommendation that no increase should be granted unless the increased patronage as a result of a fuel crisis did not offset the increased cost of diesel fuel required to maintain service.

The Pacific Gas & Electric Company presented a number of filings for increased gas and electric rates during the year. At the beginning of the year the company had pending before Commission Application No. 54205, seeking an increase of \$211,500 for increased rates from its steam customers within the City and County of San Francisco. In Application No. 54127 the company has requested an additional \$15,000,000 to offset increased costs of natural gas from El Paso Natural Gas Company, which were to take effect in November 1973. In the latter case, the Commission issued Decision No. 81590 dated July 10, 1973, authorizing this increase.

Application No. 53185 by P.G. & E. Company requested an addition to the electric tariffs to provide a fuel adjustment clause. The Commission, on February 20, 1974, in Decision No. 82490, authorized the fuel cost adjustment clause in the tariffs. This clause allows the company in any three-month period by a tariff filing with no public hearings to increase its rates to compensate for any fuel cost increases in the preceding three-month period. In its first such filing after the approval of the Commission in Decision No. 82490, the company requested a \$55,000,000 increase relating solely to the increased cost of fuel, since the last general rate case of the company when the price of fuel was considerably lower. Subsequent to that advice-letter filing the company has made two additional advice-letter filings to offset the continued increase in fuel oil costs.

On August 30, 1973, Pacific Gas & Electric Company applied for a general increase in its electric gas and steam rates in Applications Nos. 54279, 54280 and 54281, increases that would raise the return on capital investment for the three types of services to 8.9 per cent. Hearings began in February of 1974, and have continued through June 30, 1974, with a total of twenty hearing days. These hearings are still in progress at this time.

By Application No. 54025, filed May 11, 1973, the company asked for increased steam heating rates in San





Francisco to offset fuel price increases experienced in the preceding six years. After two days of hearings, the matter was submitted for decision. It was the position of this office that any increase in steam rates based upon an increase in the fuel price should begin with the base period of December 1973. Since the company had applied for an increase in steam rates in Application No. 53227, dated March 23, 1972; and at the company's option, this Application was later dismissed, precluding, in our opinion, any attempt by the company to recover increased fuel costs earlier in time than the present Application. By Decision No. 83117, on July 9, 1974, the fuel adjustment clause using a current base price was chosen as recommended by San Francisco.

In Application Nos. 54616, 54617 and 54618, the Pacific Gas & Electric Company sought permission to increase its rates for natural gas to recover the increased costs of purchased gas from out of state suppliers, as well as California sources. Eleven days of hearings were held, and on July 9, 1974, the Commission issued its Decision No. 83127, authorizing the Pacific Gas & Electric Company to increase its rates by \$141,306,000, or a uniform rate of 1.643 cents per therm. The company had requested in its Applications \$156,263,000. Of this total amount, increases in California produced gas totaled \$2,911,000 per year, or 0.034 cents per therm; \$23,373,000 or 0.272 cents per therm, as a result of increased cost by El Paso Natural Gas Company, and \$115,022,000 or 1.337 cents per therm, from Canadian sources. The major concern of the City and County of San Francisco is the magnitude of the increased cost from Canadian sources. At the present time approximately 40 per cent of the firm gas requirements of Northern California come from Canada. The average price of Canadian gas on January 1, 1974, was approximately 38.3 cents per McF; the new price effective July 1, 1974, is 74 cents. This represents an increase in the average field price of 70.1 cents per McF, for gas of 28.4 cents, or an increase of 74.2 per cent. This is of major concern to San Francisco, and it will be requested by this office that the Board of Supervisors of the City and County of San Francisco pass a resolution requesting intervention by the state department in negotiating future prices of natural gas imported into the United States.

#### OTHER MATTERS

This office also assisted other City departments in matters relating to public utilities and the establishing of rates for services involving tow-away rates, taxicab rates, water rates, school bus contract rates. In each instance, rate expert in City Attorney's office was called upon to review the requested rate increases and recommendations as to any changes.





This office also participated in oral argument before the Commissioner of Internal Revenue in Washington, D.C., regarding their proposed rules to be promulgated by the Internal Revenue Service. The effect of the proposed Internal Revenue Service ruling would cost the rate payers of California approximately \$23,000,000 in additional telephone rates. In June 1974, the Internal Revenue Service made its final ruling regarding this matter in favor of the Utilities.

This office also assisted the San Francisco Water Department in a review of the water rate study submitted by outside consultants.

Telephone service to the new medical facilities in San Francisco was also reviewed, and as a result of a conflict arising between the company and the City over a tariff filing that would have precluded service sought by the City for its new medical facilities, we were able to reverse the ruling and secure for the hospital the telephone services it was seeking to have installed in its new facilities scheduled for completion in 1975.





## VI. CODE ENFORCEMENT SECTION



## VI. CODE ENFORCEMENT SECTION

Code enforcement activities include, primarily, enforcing City codes by court action, advising City departments involved in code enforcement and drafting legislation involving code enforcement.

### ABATEMENT CASES

There are approximately 93,000 structures for single family occupancy, 24,000 structures for 2 family occupancy and 18,000 structures for three or more family occupancy in the City and County of San Francisco. From time to time, the condition of some of these properties fall below the minimum standards for housing as established by the San Francisco Housing Code or other codes regulating the use or condition of housing in the City and County of San Francisco. When these properties have fallen below the standards required, the various regulatory departments of the City commence administrative action to secure compliance with the minimum standards required by the codes. In a few cases, primarily including the three or more family structures, code compliance cannot be secured through the administrative procedure and those cases are referred to the City Attorney's office for court action to abate the substandard conditions in the property. These cases are known as abatement cases and are the primary activity of the code enforcement section of the City Attorney's office.

### ACTIVITY DURING YEAR

During the year, 178 new abatement cases were referred to the City Attorney, including 22 cases from the City's Federally Assisted Code Enforcement Program (FACE). (The FACE Program is a federally funded program wherein building-by-building inspections are made in certain designated areas of the City. If code violations are found to exist in a building, the owner may apply to the Federal Government for financial assistance in the form of low interest loans and grants to finance the necessary corrective work. The FACE Program is currently being phased out and will be replaced by a City funded Rehabilitation Assistance Program (RAP).)

During the year, 175 cases were closed out, including 26 FACE cases. Eighty-nine of the closeouts resulted from rehabilitation of the premises, 50 from demolition of the premises and 36 for other reasons, primarily dismissals of pending deferred





cases by reason of the statute of limitations on summons and judgments. This latter type of closeout occurs where work is going on and this office is advised to defer legal action and while the case is deferred, the statute of limitations runs on the abatement case. These cases are then closed out and referred back to the referring department with instructions to return them in the event corrective work stops. Almost without exception, work on such cases is continued to completion without re-referral to the City Attorney. During the year, a substantial number of dwelling units were represented by abatement cases closed out in the City Attorney's office.

1973-74 Closeouts

	<u>No. of Cases</u>	<u>Dwelling Units</u>	<u>Other Type Structures</u>
Rehabilitation	89	606	2
Demolition	50	195	6
Others	<u>36</u>	<u>235</u>	<u>1</u>
Total	175	1,036	9

One Hundred Eighty-five new cases were filed in the Superior Court during the year including 17 FACE cases.

During the year, 175 trials or hearings were conducted on abatement cases resulting in injunctions in favor of the City. Of these cases, 25 closed out during the year and 150 including 31 FACE cases, were pending at the close of the year.

Thirty-seven of the cases that closed during the year had progressed far enough to entitle the City to costs. Motions for final judgment were made in these cases resulting in judgments in favor of the City in the amount of \$2,191.96. One Thousand One Hundred Forty-two Dollars and Twenty-Five cents of these judgments were collected during the year. In addition, in one contempt case, the City was awarded and received \$250.00 in sanctions. The average cost to the City per case is \$45.00 to \$60.00 to file and serve a case, and \$60.00 to \$75.00 if the case goes on trial.

The case inventory list discloses that there are presently pending 605 litigated cases, 52 nonlitigated-deferred cases and 77 nonlitigated in process, for a total of 734 cases. Two Hundred Sixty-Seven or 44 per cent of the litigated cases





have gone to trial or hearing and an injunction is outstanding in favor of the City. Two Hundred Forty or 40 per cent of the litigated cases are currently on a deferred status at the request of the Department of Public Works because the owners are working on the buildings and making progress toward completion.

SUMMARY OF YEAR END INVENTORY

Litigated Cases Pending:

	<u>Active</u>	<u>Deferred</u>
Department of Public Works	290	176
FACE	68	63
Department of Public Health	<u>7</u>	<u>1</u>
Total	365	240

Total Litigated Pending: 605

Nonlitigated Cases Pending:

	<u>In Process</u>	<u>Deferred</u>
Department of Public Works	23	36
FACE	2	16
Department of Public Health	<u>0</u>	<u>0</u>
Total	25	52

Total Nonlitigated Pending: 77

Total Pending Caseload: 734

During the year, the abatement staff made approximately 500 court appearances on code enforcement cases.



## ENFORCEMENT BY CONTEMPT

In November, our program of enforcing injunctions on the most dangerous buildings was intensified and during the year owners of 86 properties were cited on orders to show cause re contempt. Eleven of these cases closed during the year and 75 were pending at the end of the year.

Enforcement by contempt requires a large amount of clerical and administrative time and 3 to 4 court appearances, on the average, for each case. It is, however, very effective as construction is under way in earnest on the 75 pending contempt cases. In the great majority of these cases, the first or second court appearance is sufficient to motivate the owner to commence the repair or demolition. In a few cases during the year, unfortunately, it has been necessary to prosecute the owners for contempt and seek fines and imprisonment in an effort to obtain compliance. Owners of six properties were prosecuted for contempt, two of these cases closed during the year, and four are still pending with construction or demolition under way or contemplated. All of the owners prosecuted were fined and five were ordered committed to the county jail until compliance with the court order. These jail commitments were stayed, however, so long as work was in process expeditiously to make the required repairs.

## DEMOLITION BY CITY

In some cases, the only resolution of the problem is for the City to demolish the structure. During the year, writs of possession were obtained on five properties, four of which were demolished by the City. The owner of the other structure undertook repairs at the last minute.

The cost of demolition is added to the taxes as a special assessment pursuant to the provisions of the San Francisco Municipal Code and the Government Code.

## ADVICE TO CITY DEPARTMENTS INVOLVING CODE ENFORCEMENT

Two principal attorneys were assigned to provide legal advice to the City's Federally Assisted Code Enforcement Program (FACE). The kinds of advice included interpreting contracts, resolving mechanics' lien problems, tax liens, levies, approving the form of FACE loan documents and preparation of opinions.







## LEGISLATION

This office worked through the City's representative in Sacramento to assure passage of the Marks Foran Act of 1973 with amendments which would not adversely affect the City's proposed Rehabilitation Assistance Program (RAP). This office has continued to work to assure that other amendments to the legislation will not adversely affect RAP.

This office drafted a Charter amendment for the November ballot to authorize the issuance of revenue bonds for RAP. We prepared the first draft and subsequent amendments to the ordinance adopting Chapter 32 of the San Francisco Administrative Code, establishing the City's comprehensive residential rehabilitation financing program.

This office worked with bond counsel in preparation of Resolution No. 377-74, authorizing the issuance of bonds for RAP and are currently preparing the legal papers for a judicial action validating the bonds to be issued. Other legislation drafted or reviewed and revised by this office has included the resolutions designating RAP areas and approving the execution of an agreement for local loan approval authority under FACE. We have also participated in negotiations with HUD for release of FACE loan funds.

## SUMMARY

The activities for the year have been extremely successful as disclosed by the statistics. Assignment of additional attorneys on a full time basis during the year to the Code Enforcement Program has resulted in a more efficient and effective operation. It is anticipated that when the City's Rehabilitation Assistance Program (RAP) becomes operational in a few months, the workload of the code enforcement staff will increase. During the year two attorneys worked full time and an additional six attorneys worked part time on code enforcement activities.



VII. SERVICES RENDERED TO OTHER CITY DEPARTMENTS





## VII. SERVICES RENDERED TO OTHER CITY DEPARTMENTS

### CONTRACT PREPARATION AND REVIEW

During the fiscal year 122 contracts of the Department of Public Works, including the Bureau of Architects and Bureau of Engineering, were prepared and reviewed. Leases, contracts and other legal documents were prepared, reviewed and approved for various City commissions, departments and officers, including the Chief Administrative Officer, Purchaser, Real Estate Department, Recreation and Park Commission, Parking Authority, Art Commission, Mayor's Office, Juvenile Court, Department of Social Services and Planning Commission.

### LEGAL CONSULTATION AND ADVICE

In addition to 303 formal opinions, this office completed numerous requests for legal research, advice and preparation of various documents concerning legal problems which arise in connection with the day to day operations of the various departments of city government.

Seven Hundred Forty-six work assignments were completed this year. Legal problems arise which do not permit written communications between the departments and the City Attorney because time is of the essence. Where time permits or further research is required, however, requests for legal advice are usually handled by written memorandum to a Deputy City Attorney in the form of a work assignment. The work assignment is first worked up by the deputy assigned and, depending on its relative importance or complexity, is gone over by senior deputies. The work assignment is then presented to the City Attorney, who makes the final decision before the work leaves the office as a finished product.

The only statistical record kept of legal services are the 746 written work assignments mentioned above and the number of contracts requiring formal approval. The City Attorney and deputies are constantly performing a wide range of legal services for the 44 departments and offices of the City and County government, for the Municipal and Superior Courts, the Parking Authority, the Housing Authority, the Redevelopment Agency, the San Francisco Unified School District and the San Francisco Community College District, as well as legal informational services for members of the public and for other public jurisdictions. Such services consist mainly of document preparation, review and approval of contracts, leases, bonds, securities,





insurance policies, civil service documents, applications for federal and state grants, title policies and reports; the preparation, review and approval of all documents and matters involved in general obligation and revenue bond issues; oral and written advice to employees, officers, departments, boards and commissions of the City and County; attendance and advice at employee disciplinary hearings conducted by City departments; attendance and advice at license and permit hearings; attendance and representation of the Probation Officer and Social Services Department at Juvenile Court proceedings; preparation and prosecution of child abandonment proceedings in Juvenile Court; representation of the Assessor's office at equalization hearings conducted by the Assessment Appeals Board; attendance and advice at meetings of boards and commissions and office conferences and meetings with officers and representatives of departments.





ANNUAL REPORT OF THE CITY ATTORNEY  
CITY AND COUNTY OF SAN FRANCISCO

JULY 1, 1974 - JUNE 30, 1975

THOMAS M. O'CONNOR  
CITY ATTORNEY







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I LITIGATION





## LITIGATION

The City Attorney's office handles civil litigation involving the City and County, the San Francisco Unified School District and the Community College District.

### 1. LITIGATION CONCLUDED IN FISCAL YEAR

1,232 actions were concluded during the 1974-75 fiscal year as follows:

Tort Actions	595
Nontort Actions	109
Abatement Actions	192
Workers' Compensation and Subrogation Actions	315
Appellate Litigation	<u>21</u>
Total	1,232

#### Tort Litigation

595 tort actions concluded sought damages for injuries to persons and properties and for death.

See Table 1 at the end of this chapter for summary of tort actions concluded.

See Table 2 at the end of this chapter for summary of departments, judgments paid, settlements and cases won or dismissed.

#### Nontort Litigation

109 nontort actions concluded were writ proceedings (mandamus, prohibition, certiorari) and contract, eminent domain, tax, antitrust and injunction actions.

See Table 3 at the end of this chapter for summary of departments involved.

#### Abatement Actions

192 actions concluded were actions taken to abate nuisances from violations of building, health, housing and related laws and ordinances, instituted after unsuccessful efforts of the departments concerned to eliminate the nuisance.



See Chapter VI of this report for details.

Workers' Compensation and Subrogation Proceedings.

Proceedings before the Workers' Compensation Appeals Board concern applications filed by employees of City, the School District and the Community College District for injuries or death incurred within the scope of employment. This office attended 743 hearings relating to 531 applications. 7 subrogation suits were concluded.

See Chapter IV of this report for details.



## Appellate Litigation

The 21 appellate cases concluded are:

1. Bally, Inc. v. San Francisco, Court of Appeal 1 Civil 33797 (nonpublication). Affirmed judgment for refund of \$10,155 Knoff mandate taxes.

2. Banovic v. City and County of San Francisco, Appellate Department, San Francisco Superior Court, No. 3445. Plaintiffs alleged they had been worked out of classification and were entitled to the pay differential between authorized salary and that of the higher classification whose duties they performed. The Municipal Court granted the City summary judgment that as a matter of law none of the Charter formalities had been followed to permit this working out of classification, therefore the City could not be compelled to pay additional money. The Appellate Department of the Superior Court affirmed.

3. Bains v. City and County of San Francisco, 1 Civil 34986 (nonpublication). Plaintiff sued City and County of San Francisco and arresting officers for false arrest and false imprisonment. Appeal was based on issue whether substantial evidence existed to support the verdict that the police officers did not have probable cause to arrest the plaintiff. Court of Appeal upheld verdict.

4. Board of Permit Appeals v. McDonald's Systems of Calif., Inc., 44 C.A.3d 525. Appeal concerned Board of Permit Appeals' denial of a permit to remodel a building at 16th and Mission Streets and reversed a Superior Court decision which held that the Board lost jurisdiction when it failed to decide the matter within 40 days from the filing of an appeal. The Court of Appeal remanded the case to the Superior Court for a determination whether the Board's order was sustained by sufficient evidence in light of the entire record.

5. Board of Supervisors v. Robert J. Dolan, Court of Appeal 45 C.A.3d 237. Writ of mandate to the Clerk of the Board of Supervisors directing him to have printed residential rehabilitation bonds. Respondent Dolan had refused to have the bonds printed on the ground that issuance of the bonds would violate the following provisions in the State Constitution: Article XIII, Section 25 (extension of credit or gift of public funds); Article XIII, Section 40 (general obligation bonds require two-thirds voter approval); Article XXXIV, Section 1 (vote required to establish low rent housing project). The petition for a writ was originally filed in the California Supreme Court. The Supreme Court transferred the case to the Court of Appeal. The Court of Appeal denied the petition for a writ of mandate without prejudice to filing in the Superior Court. A petition for hearing in the Supreme Court on the denial of the writ was filed. The Supreme Court granted the hearing and transferred the case to the Court of Appeal with directions to issue an alternative writ of mandamus. The alternative writ was issued and a decision favorable





to the Board of Supervisors on all issues was rendered.

6. Boyle, et al. v. Mongan, et al., Court of Appeal 1 Civil 33179 (nonpublication). Plaintiff appealed the granting of a demurrer without leave to amend in an action for conversion against the County Clerk and a Judge of the Superior Court. The Court found under the facts of this case that the appellants had no right to the deposited fund and for that reason the complaint did not state a cause of action.

7. City and County of San Francisco v. Cooper, Bangs, et al., 13 C.3d 898, writ of mandate issued to compel Controller to make salary payments pursuant to Salary Standardization Ordinance 152-74 and Board of Education Resolution 44-9-Sp 1. Supreme Court held that a duly enacted legislative measure cannot be invalidated on the grounds it was enacted as a result of an illegal strike.

8. City and County of San Francisco v. Superior Court of Contra Costa, Court of Appeal 1 Civil 36733 (nonpublication). The City filed a petition for extraordinary relief after the Superior Court of Contra Costa County refused to acknowledge the dependency jurisdiction of the City and County over a particular child and after the Superior Court of Contra Costa County denied a motion to dismiss an independent adoption petition regarding the same child. Peremptory writ of mandate issued.

9. Fox v. City and County of San Francisco, Court of Appeal, 47 C.A.3d 164. Court of Appeal reversed a judgment in favor of plaintiff in the sum of \$225,000 for injuries sustained in a collision between a Municipal Railway coach and a bicycle operated by the adult plaintiff. The Court of Appeal decision stands for the proposition that the standard of care applicable to a mentally retarded adult plaintiff on the issue of contributory negligence is that care which would be exercised by a reasonable man under the same circumstances, and not some lesser standard as the trial court's instructions permitted the jury to apply.

10. Friends of the Earth, et al. v. City and County of San Francisco, et al., United States Court of Appeals, Ninth Circuit, No. 74-3490, May 28, 1975; 518 F.2d 323. Petition for rehearing denied August 8, 1975. Affirmed judgment denying preliminary injunction halting work on two Airport Improvement Program projects pending completion of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), and vacating temporary injunction pending appeal. The Court of Appeal held that the projects involved no federal funding nor control and therefore were not federal actions subject to NEPA.

11. Hudson v. City and County of San Francisco, Superior Court Appellate Department No. 3458. The action involved alleged





working out of classification without pay. Summary judgment granted by Municipal Court affirmed.

12. Jaegger v. City and County of San Francisco, Court of Appeal 1 Civil 33283 (nonpublication). Appeal from a judgment awarded a passenger of a Municipal Railway bus who was attacked by fellow passengers. Passenger's appeal based on alleged insufficiency of evidence and failure of the trial court to give a specific proximate cause instruction. Judgment affirmed.

13. Knoff v. San Francisco, Court of Appeal 1 Civil 32311 (nonpublication). Affirmed increase in attorneys' fees from \$350,000 to \$1-1/2 million.

14. Meehan v. City and Police Commission, 1 Civil No. 32864 (nonpublication). Court of Appeal held review to be applied by the trial court was changed by the decision in Strumsky v. San Diego County, 11 C.3d 28 from the "substantial evidence test" to the "independent review test." The case was referred back to the Superior Court to apply the independent review test and the trial court upheld the Police Commission's dismissal of the police officer.

15. O'Keefe v. City and County of San Francisco, et al., Court of Appeal 1 Civil 34166 (nonpublication). Affirmed judgment in favor of City in a personal injury suit resulting from the beating of passenger by other passengers.

16. Robinson v. City and County of San Francisco, 41 Cal. App.3d 334. Plaintiff was arrested on a warrant setting forth his name and that of an impostor who had defrauded a limousine driver. Accompanying the warrant was a physical description of the impostor closely fitting the plaintiff. He was arrested. In the trial court the City received summary judgment that on an agreed statement of facts, the arresting officers reasonably believed they arrested the man the warrant directed them to arrest pursuant to Civil Code Section 43.5a. The Appellate Court reversed on the ground that even if the facts are settled "reasonable belief" under Section 43.5a was inherently a jury question rather than one for the Court.

17. San Francisco Ecology Center, et al. v. City and County of San Francisco, et al., Court of Appeal, 48 C.A.3d 584; 122 Cal.Rptr. 100. Affirmed judgment denying writ of mandamus under the California Environmental Quality Act to set aside resolutions of the Airports Commission and the Board of Supervisors adopting the Environmental Impact Report (EIR) and approving the \$390,000,000 San Francisco International Airport Improvement Program. The suit challenged the adequacy of the EIR and contended that the administrative findings of the Commission and Board were not supported by substantial evidence. Petition for rehearing denied. (Hearing by Supreme Court denied July 23, 1975.)





18. San Francisco Local 400, et al. v. City and County of San Francisco, 49 C.A.3d 272. Mandate by employee seeking to compel payment of wage differential between salary of appointed position and salary of position in which employee actually working. Mandate denied, affirmed on appeal.

19. Slaughter v. San Francisco, 1 Civil 33583 (nonpublication). Affirmed judgment for \$37,000 rejecting plaintiff's contentions of error and inadequacy; reversed \$15,000 judgment against codefendant Jack L. Jones under Veh-C. §§17150 and 17151.

20. Stanley, et al. v. City and County of San Francisco, 48 C.A.3d 575. Appellants filed claims pursuant to Government Code Sections 905 and 911.2 which claims were rejected by the City by letters containing the six-month warning requirement of Section 913(b). City moved for summary judgment on the ground that under Section 945.6(a)(1), the time for commencing the action had passed prior to the filing of the complaint. Appellants contended on their appeal from the order granting summary judgment that Section 945.6(a)(1) was violative of the due process and equal protection clauses of the State and Federal constitutions. In addition, appellant Ramar attacked the constitutionality of CCP 352(b) on equal protection and due process grounds. The Court upheld the constitutionality of Section 945.6 and CCP 352.

21. Tate v. Superior Court, City and County of San Francisco, 1 Civil 35894 (nonpublication). Plaintiff filed an action for personal injury alleging that he was injured when struck by a streetcar on Market Street. Due to the fact that the plaintiff was incarcerated, the plaintiff's attorney failed to file a certificate of readiness. The Court on its own motion dismissed the lawsuit and the ruling was upheld on appeal.



## 2. CLAIMS.

4,896 claims were filed during the fiscal year. Filing of a claim is a prerequisite to institution of a suit. This office handles investigation, review, evaluation and disposition of claims.

See Table 4 at the end of this chapter for summary of claims filed during the fiscal year by department.

## 3. LITIGATION PENDING AT END OF FISCAL YEAR.

1,271 actions were filed during the fiscal year.

See Table 5 at the end of this chapter for summary of actions filed during the fiscal year.

3,570 actions were open and pending at the close of the fiscal year.

See Table 6 at the end of this chapter for summary of open and pending cases on June 30, 1975.



TABLE 1

SUMMARY OF 595 TORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Cases</u>	<u>Judgments Paid</u>	<u>Litigated Settlements</u>	<u>Won or Dismissed</u>
Airport	1	-	-	1
Art Commission	1	-	1	-
Community College District	1	-	1	-
Electricity	3	-	1	2
Fire	3	-	2	1
Housing Authority	1	-	-	1
Juvenile Delinquency Prevention Commission	1	-	1	-
Municipal Railway	394	17	323	54
Police	62	3	39	20
Public Health	10	1	6	3
Public Works	73	1	47	25
Recreation & Park	12	-	9	3
Registrar of Voters	1	-	1	-
School District	24	-	21	3
Water	<u>8</u>	<u>-</u>	<u>6</u>	<u>2</u>
Total	595	22	458	115





TABLE 2

TORT ACTIONS CONCLUDED--  
DEPARTMENTS--AMOUNTS PAID

<u>Departments</u>	<u>No. of Cases</u>	<u>Prayers</u>	<u>Amount Paid</u>
Airport	1	\$ 4,500	\$ -
Art Commission	1	15,000	400
Community College District	1	26,750	5,000
Electricity	3	42,900	300
Fire	3	47,125	2,475
Housing Authority	1	100,000	-
Juvenile Delinquency Prevention Commission	1	150,000	-
Municipal Railway	394	26,958,860	2,264,957
Police	62	13,673,115	272,415
Public Health	10	897,550	26,250
Public Works	73	5,360,835	160,165
Recreation & Park	12	1,794,240	128,575
Registrar of Voters	1	153,130	6,000
School District	24	5,727,755	151,495
Water	<u>8</u>	<u>471,055</u>	<u>42,200</u>
Total	595	\$55,407,815	\$3,060,232



TABLE 3

SUMMARY OF 122 NONTORT ACTIONS  
CONCLUDED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Actions</u>
Adult Probation	1
Airport	4
Assessor	5
Board of Permit Appeals	8
Board of Supervisors	2
Civil Service	6
Community College District	2
Controller	2
County Clerk	1
District Attorney	1
Fine Arts Museum	1
Fire	1
Municipal Court	1
Municipal Railway	2
Parking Authority	1
Planning	1
Police	32
Public Health	2
Public Works	12
Recreation & Park	1
Registrar	1
School District	5
Sheriff	3
Social Services	15
Superior Court	1
Tax Collector	6
War Memorial Opera House	1
Water	4
Total	122





TABLE 4

SUMMARY OF CLAIMS FILED DURING FISCAL YEARDepartments Under Public Utilities Commission

Municipal Railway	2,811	
Water	<u>111</u>	2,922

Airports Commission

Airport	70	70
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All Other Departments

Adult Probation	1	
Art Commission	4	
Assessor	1	
City Planning	1	
Community College	1	
Controller	3	
Coroner	1	
County Clerk	2	
De Young Museum	3	
District Attorney	4	
Electricity	30	
Fire	78	
Health	154	
Health Service System	1	
Hetch Hetchy	2	
Housing Authority	17	
Juvenile Court	3	
Library	3	
Mayor	13	
Opera House	1	
Police	736	
Port Commission	34	
Public Administrator	2	
Public Defender	1	
Public Works	493	
Purchasing	2	
Real Estate	4	
Recreation & Park	128	
Redevelopment Agency	12	
Registrar of Voters	36	
Sheriff	48	
Social Services	10	
Superior Court	4	
Tax Collector	2	
Treasurer	1	
Unified School District	57	
War Memorial	5	
Youth Guidance Center	<u>6</u>	<u>1,904</u>

Total		4,896
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TABLE 5

SUMMARY OF ACTIONS FILED DURING FISCAL YEAR

<u>Department</u>	<u>No. of Actions</u>
Adult Probation	1
Airport	28
Assessor	14
Bay Area Rapid Transit District	2
Board of Supervisors	7
City Attorney	2
Civil Service	20
Community College District	11
Controller	4
County Clerk	3
Courts	12
de Young Museum	1
District Attorney	4
Electricity	9
Fire	12
Health	21
Hetch Hetchy	2
Housing Authority	2
Human Rights Commission	1
Library	1
Municipal Railway	393
Parking Authority	1
Permit Appeals	9
Planning Commission	6
Police	133
Port	15
Public Defender	1
Public Utilities Commission	1
Public Works	154
Real Estate	10
Recreation & Park	33
Redevelopment Agency	5
Registrar of Voters	3
Rehabilitation Assistance Program	1
Retirement	9
Sheriff	5
Social Services	49
Tax Collector	4
Unified School District	43
War Memorial	3
Water	31
Youth Guidance Center	2
Abatements	
Health	1
Public Works	182
Planning Commission	18
Fire	2
	<hr/> 203
Total	<hr/> 1,271



SUMMARY OF OPEN AND PENDING CASES ON JUNE 30, 1975

<u>Department</u>	<u>Total Cases</u>
Abatement Cases:	
All Departments (See Page 33) . . . . .	641
Airport . . . . .	113
Art Commission . . . . .	1
Assessor . . . . .	84
Board of Permit Appeals . . . . .	44
Board of Supervisors . . . . .	12
Chief Administrative Officer . . . . .	2
City Attorney . . . . .	2
Civil Service . . . . .	56
Community College District . . . . .	8
Controller . . . . .	16
County Clerk . . . . .	7
Courts . . . . .	22
District Attorney . . . . .	5
Economic Opportunity Council . . . . .	1
Electricity . . . . .	15
Fire . . . . .	13
Grand Jury . . . . .	1
Health Service System . . . . .	1
Hetch Hetchy . . . . .	15
Housing Authority . . . . .	5
Human Rights Commission . . . . .	1
Library . . . . .	3
Legion of Honor . . . . .	1
Mayor . . . . .	3
Municipal Employee Relations Panel . . . . .	1
Model Cities Agency . . . . .	2
Municipal Railway . . . . .	1,021
Museum of Art . . . . .	3
Opera House . . . . .	2
Parking Authority . . . . .	5
Planning Commission . . . . .	32
Police . . . . .	353
Port Commission . . . . .	15
Public Health . . . . .	98
Public Works . . . . .	473
Purchaser . . . . .	2
Real Estate . . . . .	24
Recorder . . . . .	1
Recreation and Park . . . . .	73
Redevelopment Agency . . . . .	14
Registrar . . . . .	8
Retirement Board . . . . .	29
Sheriff . . . . .	17
Social Services . . . . .	68
Tax Collector . . . . .	22
Treasurer . . . . .	12
Unified School District . . . . .	134
War Memorial . . . . .	4
Water . . . . .	83
Youth Guidance Center . . . . .	2





## II LEGISLATIVE SECTION



## II LEGISLATIVE SECTION





## II LEGISLATIVE SECTION

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

During the past year, this office performed legal work in connection with the preparation, analysis, review or approval of 520 ordinances and 983 resolutions which were enacted or adopted by the Board of Supervisors during the year and performed similar work in connection with 65 proposed Charter amendments or amendments thereof, and 1 bond issue which were considered by the Board of Supervisors during this period.

There were 63 formal written opinions rendered and a number of letters of advice sent to the Board of Supervisors during this same period. In addition, at least one deputy from this office was present at each meeting of the Board or of its various committees to give legal advice and assistance with respect to the many problems that arise during the course of such meetings.

Illustrative of the diverse types of legislation which were prepared and approved by this office during the past year are:

An ordinance enacting a Subdivision Code.

An ordinance creating a Commission on the Status of Women.

An ordinance creating a Ballot Simplification Committee.

An ordinance prescribing security devices for multi-family residences.

An ordinance requiring price-posting by gasoline stations.

An ordinance providing for jail consolidation.

An ordinance regulating Street Artists.

An ordinance regulating material displayed in newsracks.

An ordinance regulating sale of concealable firearms.

An ordinance establishing a 30-mile residency requirement for City employees.

An ordinance providing for the creation of maintenance districts.



## CALIFORNIA STATE LEGISLATURE

This office provided staffing for the Sacramento office of the City's former contract lobbyist following his death. Beginning May 1, 1975, fundamental changes were made in the way in which the City makes its policy views on legislative matters known to the Legislature.

For many years the City contracted with professional lobbyists to represent its interests before the State Legislature, and this office provided the contract lobbyist with the assistance of one or two deputies in drafting bills and amendments thereto, in reviewing bills for City interest, and in the presentation of City's position on various bills before legislative committees and to individual legislators.

The passage of Proposition 9 at the June 1974 election, with its restrictions on the entertainment of legislators and their staffs led to the conclusion that a thoroughly professional approach to lobbying was needed. This premise led to the conclusion that a new contract lobbyist should not be hired. Instead, a new position of legislative advocate was created with the requirement that the person appointed to that position be a lawyer. Thus, since May 1, 1975 a deputy city attorney has been the City's legislative advocate.

During the current legislative session (the first year of a two-year session) the City has taken a position of "Support" on 213 bills, and "Oppose" or "Oppose unless amended" on 124 bills.

In the past it has been the practice to catalogue all of these bills by number and title and to indicate their disposition as passed, defeated, or amended to satisfaction. They are not so catalogued in this report in the interest of brevity, but on any particular bill this office will cordially answer any inquiry as to whether it became law, failed passage or was vetoed.

A major issue before the Legislature in 1975 were various bills to provide in all public employment a system of collective bargaining and voluntary arbitration (which could be made compulsory by Board of Supervisors' action) before a Public Employee Relations Board (S.B. 275 Dills, S.B. 4 Dills, and A.B. 119 Dixon). Any of these bills, if passed into law, would have superseded charter provisions governing the setting of wages and salaries of municipal employees. Despite gubernatorial interest in the matter, and the amendment of the above bills to the extent they were supported by the League of California Cities, the County Supervisors Association, and various employee organizations, these bills did not gain sufficient support to reach a floor vote. San Francisco had an "oppose" position to S.B. 275 (Dills) by virtue of Board of Supervisors resolution No. 190-75.





A bill of particular interest was S.B. 695 (Marks) which Senator Marks introduced at the request of representatives of the airport police, and which was supported by the City. This bill would have permitted airport police to become full peace officers without having to have the consent of, or be deputized by, the Sheriff of San Mateo County. This bill focuses on a long-standing issue between the City and San Mateo County and is the third or fourth consecutive year the matter has been before the Legislature. As in other years, the Legislature was unwilling to permit a police force to operate in the unincorporated areas of a county without being subject to the control of the Sheriff of that county.

On a happier note, S.B. 181 (Marks), as of this writing, has passed the Senate and Assembly policy and fiscal committees and is awaiting action on the Senate floor. This bill would authorize payment to San Francisco of about \$116,000 as state-mandated increased costs of paying workers' compensation in April-June quarter of 1974. There is no known opposition.

A.B. 576 (Foran) similarly has passed the original house and is awaiting action on the Senate floor. This bill would exempt the San Francisco Belt Railroad from State Public Utilities Commission safety regulations, and thus permit its continued operation. The road is technically in violation of regulations relating to clearances between rail cars and buildings, but the buildings and the tracks were constructed long before the regulations were adopted. Moreover, the State Public Utilities Commission never attempted to enforce these regulations when the Belt line was owned and operated by the State.

Several other bills introduced at the request of several city departments are before the Legislature, but it would unduly lengthen this report to discuss them here.





III PUBLIC UTILITIES SECTION



### III PUBLIC UTILITIES SECTION

The Utilities General Counsel supervises the Deputy City Attorneys who are assigned to Public Utilities work. Deputies assigned to this section perform the legal services required by both the Airports Commission and the Public Utilities Commission, their staffs and the following departments under the Public Utilities Commission jurisdiction: Water Department, Hetch Hetchy and Municipal Railway.

The legal work performed for the utilities section is comprised of litigation involving the Commissions and their departments, the drafting and approval of contracts, leases and other legal instruments required in day-to-day operations and the rendering of general legal opinions and advice to the Commissions, their departmental offices and staffs.

#### SAN FRANCISCO INTERNATIONAL AIRPORT

##### Litigated Matters

##### Friends of the Earth, et al. v. City and County of San Francisco, et al.

This is an action filed in the federal court by an ecology group seeking declaratory and injunctive relief against alleged noncompliance by the Airport with the Environmental Impact Statement (EIS) requirements of the National Environmental Policy Act (NEPA). At the trial level, the United States District Court granted a preliminary injunction enjoining the federal government from granting any request for federal funds for airport development projects until such request was accompanied by an EIS on the overall development plan of the airport. The District Court, however, refused to enjoin further awards of contracts for or construction of the Airport parking garage and North Terminal projects, and the plaintiffs appealed therefrom. Pending appeal, the Ninth Circuit Court of Appeals granted an injunction against further construction by the Airport and remanded the matter to the District Court for determination of whether a bond would be required and, if so, the amount thereof. After the District Court fixed the amount of the bond at \$4,500,000, the Court of Appeals, upon motion of appellants, reduced the bond to \$1,000, upon deposit of which the injunction became effective and thereafter remained in effect for approximately 3-1/2 weeks. At that time, after hearing, the Court of Appeals affirmed the order of the District Court and dissolved the temporary injunction on the ground that the parking garage and North Terminal projects are not federally funded and therefore not subject to the EIS requirements of NEPA.





In another pending declaratory relief action seeking to declare invalid certain actions by the Airports Commission and Board of Supervisors in connection with the \$479,000,000 Airport Expansion Program, the Superior Court, in addition to granting the City's motion for partial summary judgment as to two causes of action, also sustained City's demurrers to a third cause of action with leave to amend, and sustained a demurrer to a fourth cause of action without leave to amend. Upon plaintiffs' failure to amend the fourth cause of action, the Superior Court dismissed the complaint.

In a third action pending, plaintiffs are seeking a writ of mandamus to set aside the actions of the Airports Commission and Board of Supervisors in adopting the Environmental Impact Report (EIR) for, and approving, the Airport Expansion Program. The Superior Court denied the writ and, on appeal, the District Court of Appeal affirmed the judgment denying the writ of mandamus. [Appellants' petition for hearing was subsequently denied by the Supreme Court.]

Additionally, 15 other litigated matters involved various aspects of Airport operations. These included a declaratory relief action by the State to quiet and determine title to tide and submerged lands south of the Airport. A tentative agreement to the effect that City's title will remain unchanged was reached after negotiations. Other actions involved Airport contractors' claims for damages. Actions for alleged dangerous and defective conditions of Airport property, for false arrest and assault and battery were referred, after investigation, to the Airport's insurance carrier for joint defense in conjunction with this office.

Litigation was also filed by the City Attorney's Office with respect to commercial activities on Airport property by unauthorized taxi/limousine operators resulting in injunctive orders and contempt citations against the defendants.

#### Civil Aeronautics Board Proceedings

During the past year this office also continued appearances before the Civil Aeronautics Board in support of Airports Commission policies concerning airline route proceedings pending before the Board or its examiners.

The following proceedings were participated in by this office during the past fiscal year:

Reopened Service to Omaha and Des Moines Case (to provide additional east-coast - west-coast service to mid-west, Omaha/Des Moines area), C.A.B. Docket No. 18401. Supplemental environmental and information documents were filed during the year by the party participants.



Transatlantic Route Proceedings (to provide additional transatlantic passenger, cargo and mail services to major cities of Europe, the Near East, the Middle East and Africa), C.A.B. Docket 25908. Supplemental environmental and information documents were filed with the Board by applicants and intervening parties.

### Nonlitigated Matters

In consultation with the Airports Department, this section also prepared numerous contractual, commercial lease and space-use permit agreements involving airport terminal space and adjacent Airport lands.

Other Airport matters in which this office participated involved the review of lease files for potential antitrust violations; drafting of Airport regulations; submission of oral and written opinions; and participation in Airport Commission meetings as well as meetings of the Sound Abatement Center and the Airport Land Use Committee as required.

In connection with the day-by-day disposition of Airport business, this office also reviewed airline applications, participated in proceedings before the State Public Utilities Commission involving the use of Airport property, reviewed insurance policies, bonds, assignments and other instruments affecting leasehold or contract obligations, researched various legal questions which were presented, and reviewed claims against the City in connection with alleged injury or property damage occurring at the Airport.

### HETCH HETCHY DIVISION

#### Litigated Matters

The 1973-74 Grand Jury Report questioned the legality, under the Raker Act, of the manner in which the Hetch Hetchy markets its electrical power generation.

The core issue of the report was a challenge to the "wheeling agreement," dating from 1945, whereby a large part of City's electric generation is delivered to its customers and to City departments over Pacific Gas & Electric Co. lines. Notwithstanding that the "wheeling agreement" was accepted by the United States District Court in 1945 as a reasonable compliance with the Raker Act, the Grand Jury report found practices under the contract to be in violation of the Raker Act. This office rendered extensive assistance to the department in preparing a reply refuting the Grand Jury charges.

The Grand Jury Report spawned two taxpayer suits to compel the City to purchase the Pacific Gas & Electric Co. distribution system in San Francisco and to enter the power distribution





business itself, and to have the court find the City to be in violation of the Raker Act. One suit was filed in the State Superior Court and one in the Federal District Court. This office successfully moved the State Court suit to the Federal Court, where it was consolidated for hearing with the federal suit. Together with other defendants, Pacific Gas & Electric Co., the Secretary of Interior, the Modesto Irrigation District and the Turlock Irrigation District, this office made successful motions to dismiss both suits. One suit has been appealed to the Ninth Circuit Court of Appeal, and is pending. The other plaintiff did not appeal the decision in his suit.

#### Nonlitigated Matters

As the fiscal year drew to a close, this office participated in lengthy negotiations with the Pacific Gas & Electric Co. leading to amendments of, and extension of the term of, the contract by which the company transmits Hetch Hetchy power over its lines (the so-called "wheeling agreement" previously referred to). The amended agreement is expected to result in about \$1 million per year savings to the City.

On several occasions throughout the year this office also participated in conferences with the Modesto and Turlock Irrigation Districts and the State Department of Natural Resources, Division of Water Resources and Division of Fish and Game relative to resumption of State payments under the Davis-Grunsky Act to the districts for development and improvement of the salmon spawning beds below the La Grange Dam on the Tuolumne River. The City has an indirect interest in this matter because of its partnership interest in the operation of the New Don Pedro Dam recreation facilities.

Other legal work for the department included legal memoranda regarding the right of governmental entities in the Turlock and Modesto Irrigation Districts to purchase power at cost and the legality of sales of surplus Hetch Hetchy property to the federal government.

#### Antitrust Litigation

[Following is a brief discussion of the work performed by this office section in antitrust cases in which the Hetch Hetchy Division, Water Department and other departments of the Public Utilities Commission, as well as the Airports Commission, have an interest:]

#### Acoustical File

Reviewed State of California notices of joinder of class action.





### Book Publishings

Investigation of City interest in class action for possible antitrust violations.

### Cast Iron Pipe

Conferences and correspondence in pending proceeding.

### Fertilizers

Investigation on City purchases for possible action.

### GMC Busses

Investigation undertaken for possible joinder of class action suit.

### Auto Fleet Discounts

Investigation and joinder in class action suit.

### Gypsum

Participated in distribution of settlement. Reviewed settlement order.

### Microscopes

Investigated City purchases pursuant to settlement inquiries.

### Pipe and Plumbing Fixtures

Conducted inquiries regarding installment payments to City.

### Snack Foods

Reviewed and investigated class action notices.

### Sugar

Made inquiries regarding City purchases and conferred with State on class action pending.

### Tires

Research, preparation and filing of court pleadings; attended court proceedings; participated in conferences with plaintiffs' and defendants' attorneys.



## Water Matters

Prepared and filed court pleadings; attended depositions; conferences with other legal counsel; extensive correspondence; preparations for trial undertaken; prepared settlement documents.

## WATER DEPARTMENT

### Litigated Matters

During the past year two (2) litigated eminent domain matters were concluded on behalf of the Water Department in which the aggregate awards to the City for the condemnations totalled \$3,753,300.

As the result of a lawsuit filed by a number of peninsula cities and water agencies against the City, a preliminary injunction against a water rate increase and against the transfer of Water Department funds to the general fund was granted by the United States District Court. The rate increase enjoined would have resulted in a higher percentage increase to the out-of-city customers than to those within the City. The preliminary injunction permitted a uniform increase in rates and the Public Utilities Commission adopted, and the Board of Supervisors did not disapprove, such an increase. An appeal from the order granting the preliminary injunction has been taken and briefing of the issues has been completed by all parties.

### Nonlitigated Matters

Memoranda were researched and drafted by the City Attorney's Office during the year pertaining to the validity of 1960 water supply agreements with Daly City and Guadalupe Valley Municipal Improvement District, and to the treatment of funds derived from the sale of Water Department lands, as distinguished from water sales revenue.

Extensive amendments were drafted and submitted to the Board of Supervisors to be incorporated into the existing ordinance establishing a special assessment lien against the property served for unpaid water bills in excess of \$100.

Other matters, including preparation of opinions, drafting of ordinances and review of the legality of proposed department operations, took place in connection with the work of the Water Department.

## MUNICIPAL RAILWAY

### Litigated Matters

[The report in the Litigation Section of this report covers the personal injury and property damage cases which have





arisen in connection with Municipal Railway operations.]

In one action decided this year relating to this department, the court held that Municipal Railway employees, on leave of absence in order to work full time as union officers, had failed to prove facts entitling them to City-funded retirement benefits while on such leaves.

In another decision this year, it was held that the salary standardization ordinance, insofar as it established the amount of money to be paid to the carmen's trust fund for fiscal 1972-73 and 1973-74, did not authorize a discount from the amounts stated in the ordinance, where the discounts were applied by management, in accordance with fluctuations in the number of operators on the payroll.

Another case on appeal and not finally decided involves validity of the determination of the hourly wage for carmen in 1972-73. Two other litigated matters are pending in court and raise issues concerning the wage or salary levels of Railway employees who are in classifications that are promotive from bus and streetcar operator, and the amount of increased pay to such classes designed to offset trust fund payments to the operators.

A suit by an electrical engineer in the Municipal Railway's Improvement Program, alleging a denial of civil rights in his dismissal during the probationary period of employment, was filed during the year. After extensive briefing in the United States District Court, the case was dismissed and the plaintiff appealed to the United States Court of Appeals for the Ninth Circuit. Briefing is going forward preparatory to argument before that court.

A complaint to enjoin a change in schedule in the 26 Express Line unless submitted to the Board of Supervisors under Section 3.595(c) of the Charter was also filed during the year. After hearing, a preliminary injunction was granted. The case is pending trial on the merits.

An important project in which this office participated during the past year was the ongoing construction of the City's Transit Improvement Program. Site leases for the leasing of lands to the San Francisco Municipal Railway Improvement Corporation and facilities leases providing for the leaseback of lands and improvements constructed thereon by the Improvement Corporation were reviewed and approved by this office. This office also reviewed and approved contracts relating to the procurement of 100 transit type motor coaches in connection with the Transit Improvement Program.

This office also provided counseling throughout the year on such matters as legal relations with the BARTD System,



air pollution citations, transportation facilities for the handicapped, bus and streetcar operators fringe benefits and trust fund payments. In addition, there were the day-to-day legal issues arising from the memorandum of agreement with the Transport Workers Union, particularly in the area of the five-steps grievance procedure.

#### UTILITIES GENERAL COUNSEL

All meetings of the Public Utilities Commission and Airports Commission were attended throughout the year by the Utilities General Counsel in order to provide them with legal advice and assistance.

In addition, the General Counsel provided legal assistance to the General Manager of Public Utilities, the Director of Airports, and their staffs.

This past year he also reviewed and approved as to form 236 contracts, permits and other documents utilized by these utilities.



#### IV EMPLOYEES' RETIREMENT SYSTEM





## IV EMPLOYEES' RETIREMENT SYSTEM

### RETIREMENT BOARD HEARINGS AND OTHER LEGAL MATTERS

The San Francisco City and County Employees' Retirement System is administered and managed by the Retirement Board. A Deputy City Attorney is specifically assigned by the City Attorney to act for this office as counsel for the Retirement Board and the Retirement System. This deputy devotes full time to the varied legal problems involved in the daily operations of the Retirement System. He attended each of the weekly meetings of the Retirement Board during the past fiscal year for the purpose of advising the Board on legal matters.

During the year, the Retirement Board heard approximately 131 cases in which applicants sought disability and death benefits because of industrial injuries. The deputy assigned to the Retirement Board prepared for and participated in each of these cases, cross-examining applicants and witnesses, producing and examining witnesses, so that there would be full presentation of all pertinent facts to the Board.

The deputy assigned to the Retirement Board also supervises other attorneys in this office who are designated to represent the City and County and the Retirement Board in matters before the State Workers' Compensation Appeals Board and the courts of this State.

### COURT LITIGATION

This office represents the Retirement System and the Retirement Board both in the courts and before the Workers' Compensation Appeals Board. Most of the litigation involving the Retirement Board and the Retirement System concerns the determination by the court as to who is entitled to benefits under the Retirement System, the extent of such benefits, or whether benefits have been improperly denied an employee or his beneficiary. Nineteen such cases are pending.

More and more frequently, this office is called upon to represent the Retirement System in domestic relations litigation involving employees of the City and County who are members of the Retirement System and therefore have funds in the Retirement System. Although it is usually not necessary to prepare pleadings or appear in court in such cases, an increasing amount of time and effort is spent conferring with attorneys representing the parties and assisting them with the legal problems relating to their rights to the funds in the Retirement System and in the benefits payable under the Retirement System.



STATE WORKERS' COMPENSATION APPEALS BOARD  
PROCEEDINGS AND SUITS IN INTERVENTION

The Retirement Board, pursuant to Section 3.515 of the Charter, administers the benefit provisions of the Workers' Compensation laws of the State of California for industrial injuries and deaths sustained by employees of the City and County, the Unified School District and the Community College District. This office appears on behalf of the Retirement System in hearings before the Workers' Compensation Appeals Board of the State of California in connection with all contested claims for workers' compensation benefits against the City and County, the Unified School District and the Community College District. Hearings are held by the Appeals Board in those cases in which the Retirement System denies liability for the alleged industrial injury or death, or denies that an injury occurred, or in which the Retirement System contests that the claimed disability resulted from the injury, or in which the Retirement System questions the extent of the claimed disability.

During the past year, 531 applications for workers' compensation benefits were filed or pending before the Appeals Board. As a result, this office prepared for and participated in 743 hearings before the Appeals Board. The hearings involved applications for benefits filed by employees of the following departments or agencies: Adult Probation, Airport, City Planning, Civil Service, Community College District, Coroner, Electricity, Fire, Hatch Hetchy, Juvenile Court, Municipal Court, Human Rights Commission, Municipal Railway, Police, Public Health, Public Library, Public Administrator, Public Works, Purchaser, Recreation and Park, Registrar of Voters, Sheriff, Social Services, Unified School District, War Memorial, Water and Zoo.

The City Attorney also represents the City and the Retirement System with respect to the City's right of subrogation against third parties who negligently cause injury to City employees, whereby reimbursement is obtained for the amount of compensation paid and medical costs incurred by the City for the benefit of such employees as a result of their injuries. Where a City employee is injured in the course of his employment by a third party and thereafter commences an action in his own behalf against that third party, the City has the right to intervene in that action in order to recover the amount of benefits paid to or on behalf of the City employee. During the past year, this office concluded seven such suits, resulting in the recovery of a total sum of \$28,271.11. In addition, reimbursement of a total sum of \$90,682.13 was obtained by way of settlement without litigation in 45 other subrogation matters.







V RATE SECTION



## V RATE SECTION

The City Attorney's office is charged with the responsibility of representing the City in legal proceedings which affect the City and County of San Francisco and its residents.

One area of action involves the representation of the City's interests before regulatory agencies on matters which will directly affect the City of San Francisco and its residents. During the past year, this office was actively engaged before administrative tribunals with respect to matters ultimately affecting the financial interests of the City of San Francisco ratepayers. The scope of the proceedings involved rates, service, rules and regulations of the Public Utility companies serving the City of San Francisco.

Participation by a Deputy City Attorney and the Rate Engineer included attendance at hearings, and the issues involved required extensive preparation and research.

### FEDERAL POWER COMMISSION

Currently this office is continuing as in the past to follow present dockets before the Federal Power Commission involving natural gas rates by pipeline companies to public utility customers serving California. Due to budget and personnel limitations, our appearances have been limited to written communications and interventions where deemed appropriate in order to secure the necessary exhibits and testimony in cases before the Federal Power Commission that we are not able to send a representative. Recently the Federal Power Commission has taken action to increase considerably the price of natural gas at the well head.

With the shortage of natural gas and the threat of deregulation, it becomes more apparent that continued participation before the Federal Power Commission is of vital importance to the consumer. The north slope of Alaska is a new frontier for natural gas and this next year will be the critical year for rate regulation involving the contracts and ultimate costs of natural gas into California from Alaska by Exxon and Arco. Each of these companies is in the process of negotiation with Pacific Gas & Electric Company and the Southern California Gas Company for their share of natural gas in the north slope. The price of this gas, which will not be available until 1982, will almost double from the present price of natural gas now being paid by the distributing companies.



## CALIFORNIA PUBLIC UTILITIES COMMISSION

In September of 1972 the Pacific Telephone & Telegraph Company filed for an increase in rates totaling \$328,000,000. In January of 1973 this original request was amended down to \$302,000,000. At the beginning of the current fiscal year hearings on this Application No. 53587 were in progress. The City and County of San Francisco has consistently followed all aspects of this rate case and the Rate Engineer has devoted a good portion of his time to the issue of accelerated depreciation. It has been the position of the City and County of San Francisco that flow through depreciation is the proper method of accounting for and paying federal income taxes. In City of San Francisco vs. California Public Utilities Commission (1971) 6 Cal.3d 119, the City was successful in its appeal to have the matter of accelerated depreciation reviewed in light of Commission's Application No. 49142, Decision No. 74917 (69 Cal. PUC 53,63). The courts held in favor of the plaintiff, City and County of San Francisco, which ultimately resulted in a savings of \$215,000 to the City, and approximately \$14,000,000 to business and homeowners in the form of lower rates.

The matter was under submission when on June 18, 1974, proceedings were reopened for further briefs on the issue of reserve for deferred taxes; the entire proceedings were then submitted July 3, 1974.

On July 23, 1974, Decision No. 83162 was issued authorizing the Pacific Telephone & Telegraph Company to increase its intra-state rates by 199 million dollars. As a result of this decision, the Commission authorized the Pacific Company to continue to normalize its federal income taxes. A petition for re-hearing was denied, and the City and County of San Francisco joined the cities of Los Angeles and San Diego, and on January 14, 1975, petitioned the State Supreme Court, asking a Writ of Review on Decision No. 83162 (SF 32315); the court, on June 4, 1975, granted the Writ of Review.

The Pacific Telephone Company, in Application No. 55492, requested authority to increase its annual revenue by 131.2 million dollars to offset increased labor costs. As of this date, no hearings have been held on this application because hearings involving Application No. 55214 of the Pacific Telephone and Telegraph Company, asking authorization to increase its rates by 97.90 million dollars must still be heard before the Commission and the matter was not submitted for the decision until June 9, 1975.

The California Commission is presently investigating electric utility rate structures and changes that would be made in presently constituted rate structures to encourage conservation of electricity in the State of California, Case No. 9804.





Our office participated in these hearings and, as a result of Resolution No. 74-435 supporting lifeline rates for the poor and the elderly, supported the concept of establishing lower utility rates for those on fixed incomes and the retired. This matter has now been briefed, and a decision by the Commission will be forthcoming in the near future.

The Commission on its own motion instituted an investigation into the natural gas supply and requirements of gas public utilities in the State of California, Case No. 9642. The Commission likewise has instituted Case No. 9986, in which the fuel cost adjustment tariff provisions and procedures are being reviewed similar to the electric rate tariff structure in Case No. 9804. Both matters are now in the process of being heard before the Commission.

Pacific Gas & Electric Company has filed a number of rate application requests with the California Public Utilities Commission during the past year. Extensive hearings began in the latter part of 1973 and lasted all through the current fiscal year with the matter being submitted on May 12, 1975, with briefs due June 10. The company in Application No. 54279 requested increases in electric rates totaling 158.4 million dollars. In Application No. 54280 the company requested increases in natural gas rates totaling 73.5 million dollars. In Application No. 54281 the company is seeking increased steam heat revenues of \$775,000.00. These three matters are now awaiting decision by the California Commission.

On February 25, 1975, the Pacific Gas & Electric Company, in Application No. 55509, requested electric rate increases totaling 373 million dollars. On this same date, Pacific Gas & Electric Company, in Application No. 55510, requested an increase in its natural gas rates amounting to 122.8 million dollars. These two matters are now pending before the Commission. Hearings have not yet been set on these matters. At the same time, the Company filed two additional applications seeking adjustments for increased fuel costs of 102.3 million dollars for its electric department, and 36.8 million dollars for its gas department. (A-55542.) In the latter application the Commission issued its decision authorizing the 36.8 million dollar increase with the remainder to be considered in C-9886.

#### OTHER MATTERS

This office also assisted other City departments in matters relating to public utilities and the establishing of rates for services involving tow-away rates, taxicab rates, redevelopment service to Yerba Buena, CATV rates and water rates. In each instance, the rate expert in the City Attorney's office has to review the requested rate increases and recommendations as to many changes.



VI CODE ENFORCEMENT SECTION





## VI CODE ENFORCEMENT SECTION

Code enforcement activities include enforcing codes by court action, advising City departments involved in code enforcement and drafting legislation involving code enforcement.

### ABATEMENT CASES

There are approximately 93,000 structures for single family occupancy, 24,000 structures for 2 family occupancy and 18,000 structures for three or more family occupancy in the City and County of San Francisco and a large number of commercial structures. From time to time the condition of some of these properties fall below the minimum standards for housing as established by the San Francisco Housing Code or other codes regulating the use or condition of property in the City and County of San Francisco. When these properties have fallen below the standards required, the various regulatory departments of the City commence administrative action to secure compliance with the minimum standards required by the codes. In a few cases, code compliance cannot be secured through the administrative procedure and those cases are referred to the City Attorney's office for court action to abate the substandard or illegal conditions in the property. These cases are known as abatement cases and are the primary activity of the code enforcement section of the City Attorney's office.

### NEW ABATEMENT CASES RECEIVED DURING YEAR

During the year 235 new abatement cases were sent to this office from various City departments for legal action.

#### New Cases 1974-75

Department of City Planning	25
Department of Public Works	170
FACE Program	36
Department of Public Health	1
Fire Department	<u>3</u>
Total	235

(The FACE Program is a federally funded program wherein building-by-building inspections are made in certain designated areas of the City. If code violations are found to exist in a building, the owner may apply to the Federal Government for financial



assistance in the form of low interest loans and grants to finance the necessary corrective work. The FACE Program is currently being phased out and will be replaced by a City funded Rehabilitation Assistance Program [RAP].)

### ENFORCEMENT ACTIVITIES

Superior Court actions were filed during the year against 225 properties.

#### Suits Filed 1974-75

Department of City Planning	18
Department of Public Works	169
FACE Program	35
Department of Public Health	1
Fire Department	<u>2</u>
Total	225

During the year 86 trials were had on abatement cases resulting in injunctions in favor of the City ordering the owners to correct code violations.

To enforce outstanding injunctions, owners are brought before the court on orders to show cause re contempt. During the year this office handled 233 scheduled contempt appearances.

Enforcement by contempt requires a large amount of clerical and administrative time and 3 to 4 court appearances, on the average, for each case. It is, however, very effective as construction is under way in earnest on the pending contempt cases. In the great majority of these cases, the first or second court appearance is sufficient to motivate the owner to commence the repair or demolition. In a few cases during the year, unfortunately, it has been necessary to prosecute the owners for contempt and seek fines and imprisonment in an effort to obtain compliance. Owners of seven properties were prosecuted for contempt. All of the owners prosecuted were fined and ordered committed to the county jail until compliance with the court order. These jail commitments were stayed, however, so long as work was in process expeditiously to make the required repairs.

In some cases the only resolution of the problem is for the City to demolish the structure. During the year writs of possession were obtained on two properties which were demolished by the City.





The cost of demolition is added to the taxes as a special assessment pursuant to the provisions of the San Francisco Municipal Code and the Government Code.

### CASES TERMINATED

During the year 192 cases were terminated. [Cases were terminated because owners corrected the illegal conditions, demolished the structure or for other reasons, primarily dismissals of pending deferred cases by reason of the statute of limitations on summons and judgments.] This latter type of close-out occurs where work is going on and this office is advised to defer legal action and while the case is deferred, the statute of limitations runs on the abatement case. These cases are then closed out and referred back to the referring department with instructions to return them in the event corrective work stops. Almost without exception, work on such cases is continued to completion without re-referral to the City Attorney.

#### Terminations 1974-75

	<u>No. of Cases</u>	<u>Demolition</u>	<u>Correction</u>	<u>Other</u>
Department of Public Works	145	36	85	25
FACE Program	39	1	28	10
City Planning	7	0	7	0
Fire Department	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>
Total	192	37	120	35

During the year a substantial number of dwelling units were represented by abatement cases closed out in the City Attorney's office involving substandard housing.

#### 1974-75 Closeouts

	<u>No. of Cases</u>	<u>Dwelling Units</u>	<u>Other Type Structures</u>
Rehabilitation	112	631	4
Demolition	37	499	6
Others	<u>35</u>	<u>99</u>	<u>2</u>
Total	184	1,229	12

Fifty of the cases that closed during the year had progressed far enough to entitle the City to costs. Motions for final judgment were made to these cases resulting in judgments in favor of the City in the amount of \$3,572.12. Much of this





amount has been collected and deposited in the general fund. The average cost to the City per case is \$60.00 to \$75.00 to file and serve a case, and \$75.00 to \$90.00 if the case goes to trial.

#### SUMMARY OF YEAR END INVENTORY

The case inventory list discloses that there are presently pending 641 litigated cases and 83 nonlitigated for a total of 724 cases. Two hundred seventy-seven, or 43 per cent, of the litigated cases have gone to trial or hearing and an injunction is outstanding in favor of the City. Two hundred sixty-three, or 36 per cent, of the total cases are currently on a deferred status at the request of the Department because the owners are working on the buildings and making progress toward completion.

#### Year End Summary of Pending Cases

	<u>Litigated</u>	<u>Nonlitigated</u>	<u>Total</u>
Dept. of Public Health	9	0	9
Dept. of Public Works	487	63	550
FACE Program	126	19	145
City Planning	17	1	18
Fire Department	<u>2</u>	<u>0</u>	<u>2</u>
Total	641	83	724

#### ADVICE TO CITY DEPARTMENTS INVOLVED IN CODE ENFORCEMENT

Two principal attorneys were assigned to provide legal advice to the City's Federally Assisted Code Enforcement Program (FACE). The kinds of advice included interpreting contracts, resolving mechanics' lien problems, tax liens, levies, approving the form of FACE loan documents and preparation of legal opinions.

During the year this office assisted the Department of Public Works in preparing new forms and procedures in an effort to handle a larger number of abatement cases at the administrative level.

In addition, this office assisted the Department of Public Works in preparation of forms and procedures for the implementation of A.B. 475 which amended Sections 17299 and 24436.5 of the Revenue and Taxation Code to provide, inter alia, that a taxpayer who derives rental income from housing determined by the City to be substandard by reason of violations of state or local codes dealing with health, safety or building, cannot deduct from state personal income tax and bank and corporate income tax, deductions for interest, depreciation or taxes attributable



to such substandard structure where the substandard conditions are not corrected within six (6) months after notice of violation by the City.

On a number of occasions upon request, Deputy City Attorneys appeared at administrative hearings before the Director of Public Works and the Director of Public Health to give advice during the course of the hearings.

During the course of the year the staff handled literally hundreds of informational calls referred by other departments to the City Attorney involving the status of abatement cases, code problems, condition of property and other related questions from attorneys, property owners, citizens, community groups and the media.

### LEGISLATION

During the year an action was filed in the Appellate Courts to compel issuance of the bonds to be issued pursuant to the ordinance establishing the City's Rehabilitation Assistance Program (RAP) prepared by this office last year. The Court of Appeals ordered the bonds issued and held that RAP would serve a valid public purpose.

There is presently pending an application with the Internal Revenue Service to have the RAP Bonds given tax-exempt status. In addition, this office is in the process of preparing regulations under which the RAP Program will operate.

### SUMMARY

The activities for the year have been extremely successful as disclosed by the statistics. It is anticipated that when the City's Rehabilitation Assistance Program (RAP) becomes operational in a few months, the workload of the code enforcement staff will increase.





VII SERVICES RENDERED TO OTHER CITY DEPARTMENTS



## VII SERVICES RENDERED TO OTHER CITY DEPARTMENTS

### CONTRACT PREPARATION AND REVIEW

During the fiscal year 224 contracts of the Department of Public Works, including the Bureau of Architecture and Bureau of Engineering, were prepared and reviewed by this office. Leases, contracts and other legal documents were prepared, reviewed and approved for various City commissions, departments and officers, including the Chief Administrative Officer, Purchaser, Real Estate Department, Recreation and Park Commission, Parking Authority, Art Commission, Mayor's Office, Juvenile Court, Department of Social Services, Planning Commission and others.

### LEGAL CONSULTATION AND ADVICE

In addition to 143 formal written opinions, this office completed numerous requests for legal research, advice and preparation of various documents concerning legal problems which arise in connection with the day-to-day operations of the various departments of city government.

Legal problems arise which do not permit written communications between the departments of city government and the City Attorney because time is of the essence. Where time permits or further research is required, however, requests for legal advice are usually handled by written memorandum to a Deputy City Attorney in the form of a work assignment. The work assignment is first worked up by the deputy assigned and, depending on its relative importance or complexity, is gone over by senior deputies. The work assignment is then presented to the City Attorney who makes the final decision before the work leaves the office as a finished product. 802 such work assignments were completed this fiscal year.

The City Attorney and deputies are constantly performing a wide range of legal services for the 44 departments and offices of the City and County government, for the Municipal and Superior Courts, the Parking Authority, the Housing Authority, the Redevelopment Agency, the San Francisco Unified School District and the San Francisco Community College District. Such services consist mainly of document preparation, review and approval of contracts, leases, bonds, securities, insurance policies, civil service documents, applications for federal and state grants, title policies and reports; the preparation, review and approval of all documents and matters involved in general obligation and revenue bond issues; oral and written advice to employees, officers, departments, boards and



commission of the City and County; attendance and advice at employee disciplinary hearings conducted by City departments; attendance and advice at license and permit hearings; attendance and representation of the Probation Officer and Social Services Department at Juvenile Court proceedings; preparation and prosecution of child abandonment proceedings in Juvenile Court; representation of the Assessor's Office at equalization hearings conducted by the Assessment Appeals Board; attendance and advice at meetings of boards and commissions and office conferences and meetings with officers and representatives of departments.

#### EMPLOYEE RELATIONS DIVISION

A Deputy City Attorney is also assigned to the newly created Employee Relations Division of the City and County of San Francisco. This Deputy advises the Employee Relations Division on a day-to-day basis regarding the legal ramifications and interpretations of employee relations policies that are being contemplated. He also participates in the meeting and conferring process as a part of a City's management team to give legal advice when necessary. Periodically, this Deputy is also called upon to advise the newly created Municipal Employee Relations Panel with regard to the legalities of open meetings, requirements of hearings before said panel and various other legal issues which the panel raises.

















